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ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Friday, May 5, 1950

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Ottawa, Ontario,
Friday, May 5, 1950.

M O R N I N G S E S S I O N

ARGUMENT BY MR. MacPHERSON (Cont'd)

THE CHAIRMAN: All right, Mr. MacPherson.

MR. MacPHERSON: Mr. Chairman, yesterday referring to orders in council the question came up as to what directions had been given to the Board at any time which involved a consideration of economic elements. We discussed P.C. 4678, which was the order in council dealing with the 21% case. I have gone over that and I do not think there is much --

THE CHAIRMAN: You say the order in council dealing with the --

MR. MacPHERSON: Dealing with the 21% judgment.

THE CHAIRMAN: On the appeal?

MR. MacPHERSON: On the appeal, yes, and referring it back. I do not think there is much, if anything, in that order in council which directs the Board relative to economic elements, but in P.C. 1487, which was the order in council directing the general freight rate inquiry, there is this paragraph, and it is the fourth paragraph.

THE CHAIRMAN: What is the number of the order in council?

MR. MacPHERSON: P.C. 1487.

"The committee also observe that since the decision was rendered upon the investigation referred to in the preceding paragraphs" --

THE CHAIRMAN: What is that investigation?

MR. MacPHERSON: " -- namely, by judgment of the said Board of September, 1927" --

That was the general freight rates inquiry of 1927.

October 1930
Friday, May 1, 1930

REPORT ON THE PROCEEDINGS OF THE

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" -- many changes have taken place in the economy of Canada, and it is therefore advisable that the Board of Transport Commissioners for Canada be directed to make a thorough investigation of the rate structure of railways and railway companies which are under the jurisdiction of parliament, with a view to the establishment of a fair and reasonable rate structure which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities so as to permit the freest possible interchange of commodities between the various provinces and territories of Canada and the extension of Canadian trade both foreign and domestic having due regard to the needs of agriculture and other basic industries."

That direction is one which I suggest --

THE CHAIRMAN: That is the usual direction. Do you not find that in the older order in council?

MR. MacPHERSON: I think it is in the old order in council too. I think it is in the one of 1927 as well but in any event it indicates to what extent the Board is directed to consider this matter.

THE CHAIRMAN: I think we discussed that order in council before. The language would seem to show that the thing to be achieved is equalization.

MR. MacPHERSON: Equalization, yes.

THE CHAIRMAN: And that it is the opinion of the government that would lead to a free and easy exchange of goods between different parts of Canada and elsewhere.

MR. MacPHERSON: Yes, Mr. Chairman, that is right, but actually --

THE CHAIRMAN: Section 314 already provides for the equalization of tolls under substantially similar circumstances and conditions.

MR. MacPHERSON: That is right.

THE CHAIRMAN: The same language.

MR. MacPHERSON: The same language is used there.

THE CHAIRMAN: " -- in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route."

The Board will have to interpret it.

MR. MacPHERSON: I realize that.

THE CHAIRMAN: Here is what I had in mind yesterday towards the end of Mr. Cronkite's argument. I did not like to delay him on it. We were told, for instance, in Vancouver by the person who was then giving evidence that in that person's opinion -- and I think he was speaking for the Board of Trade of Vancouver -- the Duncan Commission, for instance, should not have existed at all, that the Board of Transport Commissioners should have conducted that sort of inquiry in the Maritimes, and made possibly the same sort of report. In their opinion that was the kind of work that the Board of Transport Commissioners ought to be doing.

MR. MacPHERSON: I would not agree with that.

THE CHAIRMAN: That is what is meant by economic investigation. It is the kind of work we are doing here because we are asked to report to the government on the economic question.

MR. MacPHERSON: I think the Board of necessity has all the information concerning the economic element.

THE CHAIRMAN: They have told us that they do not.

MR. MacPHERSON: They have told us that in certain cases they do not, but on the other hand I suggest that in the case I cited to the Commission yesterday --

THE CHAIRMAN: Demurrage.

MR. MacPHERSON: Demurrage -- that they were considering that.

THE CHAIRMAN: We will have to examine that. It is not much to find after forty-seven years; The demurrage case is rather peculiar because of its nature, is it not? I have not read it yet but just from what you told me --

MR. MacPHERSON: I read parts of it to your lordship. Then there is this order in council which I think is framed in the broadest terms in the matter of direction to the Board. If I may go on, Mr. Chairman, I was dealing at page 39 with expiry rates and special rates. I have put them together.

THE CHAIRMAN: What page?

MR. MacPHERSON: Page 39.

Expiry Rates and Special Rates

Evidence with respect to the special expiry tariffs on seed was given at Winnipeg in a joint submission of Seed Growers organizations of the Prairie Provinces and is to be found at pages 574 to 634 of Volume 4. Evidence was given on the special purebred livestock rates and exhibition rates at Regina by the Saskatchewan Stock Growers Association at page 1066 of Volume 6, and by the Saskatchewan

Cattle
/ Breeders Association in its brief -- pages 948 to 975 of Volume 6. The position which the province takes is clearly set out at pages 77 and 78 of the Saskatchewan Submission Exhibit 128.

These rates, which in many instances have been in force for many years in the country for some specific purpose, should not, we submit, be allowed to expire or be terminated merely at the whim of the railways. In the case of the seed grain rate that was a rate that was renewed year by year, but it was taken for granted that it would be removed each year although there was an expiry date in it. Ultimately it expired and was not renewed. In so far as the other rates, the special rates, they had been in force for a number of years. If a rate of this nature has been in force for a period of say five years or more then, in our view, before it could be discontinued there should be consideration by the Board and inquiry as to all circumstances and relevant factors thereto. The railways should not by ex parte action secure termination of rates which were established for a particular purpose and upon which certain industries rely unless and until the Board is satisfied that due notice has been given to all interested parties that the railways propose to terminate the rates and an inquiry is held.

In connection with both of these, notice was of course given but what we suggest is that an inquiry be held in any event by the Board in those cases where the rates have been in for some time.

I do not think that this requires an amendment to the Act, but I do think that it should be dealt with by regulation of the Board. I feel that the Board's regulations are due for revision. Revised regulations

can and should cover a great many points which would make unnecessary actual amendments of the Act.

(Page 21760 follows

I would like at this time again to appeal to the railways for reconsideration of the various increases they have imposed recently.

I am putting this in under instructions. I realize that the commission can do nothing about it.

THE CHAIRMAN: Would you repeat that, please?

MR. MACPHERSON: I would like at this time again to appeal to the railways for reconsideration of the various increases they have imposed recently. It would appear that in the case of exhibition rates they are now at a prohibitive level.

COMMISSIONER ANGUS: On what principle would the board be expected to act in deciding whether such rates might or might not be raised? Would they give consideration to the degree of interest involved or to general economic consequences?

MR. MACPHERSON: I think they would have to give some consideration to both, because really in connection with each, the reason for the existence of the rate was to be found. In the matter of seed grain, for instance, the purpose of the rate was to encourage better seed in the country, and in the matter of purebred livestock, similarly, it was to encourage the raising of pure bred livestock.

THE CHAIRMAN: You are talking of rates fixed by the railways?

MR. MACPHERSON: By the railways, yes.

THE CHAIRMAN: Yes.

MR. MACPHERSON: And in the case of exhibitions, I think it is apparent that the purpose was to encourage, through these fairs, the population generally interested in agriculture, in improving their herds and improving their cattle; so that there would be public interest, general interest, and as well there would be economic conditions.

THE CHAIRMAN: By purpose, you mean the railways'

purpose?

MR. MACPHERSON: Yes, the railways' purpose. I think undoubtedly the purpose of the railways was to assist the agricultural industry in the country.

THE CHAIRMAN: That is quite a legitimate object of the railways to have?

MR. MACPHERSON: Yes. That is right.

THE CHAIRMAN: What you say is that once they have put in a rate of that sort, they ought not to be allowed to repeal it.

MR. MACPHERSON: Ex parte, without the board being satisfied that it should be repealed.

THE CHAIRMAN: All right. Will you proceed?

MR. MACPHERSON: Yes.

The Long and Short Haul Clause.

The Commission will expect some statement from me on behalf of my Province on the issue elaborated in evidence by Alberta. It has been made quite clear to the Commission that discrimination of considerable magnitude does exist in our freight rate structure as a consequence of lower water compelled transcontinental rates in effect to Pacific Coast points than the rates on the same commodities moving a substantially shorter distance to points in the Prairie Provinces. As the levels of rates applicable to coast and interior points vary in relation one to the other the points at which these rates equalize shift but there are always found numerous examples of rates to prairie points higher than obtain for the carriage of the same commodities the greater distance to the Pacific Coast.

The water compelled rates to the Coast are of course competitive and I should therefore like to call

attention to the submission of Saskatchewan regarding this class of rates. Competitive rates and the position of this Province in regard thereto are dealt with in detail in Part III of Exhibit 128, at pages 84 to 88 inclusive. Briefly, the position there taken is that:

"As business enterprises the railways should retain some freedom to meet legitimate competition by instituting competitive rates, subject to investigation and approval of the Board of Transport Commissioners. It would seem that the investigation should be aimed at determining authoritatively the validity of the claims upon which the rate was based, the effect on rail revenues and particularly some affirmative assurance that the traffic involved will not be carried at a loss. It is not the desire of the Province at this time to draw up a formula which should be followed, but to clarify the views expressed above it is suggested that a competitive rate could be instituted by the railways and filed with the Board together with all data supporting the alleged necessity for its institution. A responsibility would then rest on the Board to investigate, within a stated period, the validity of the data so presented and determine the desirability or otherwise of allowing the rate to continue in effect. Implicit in the foregoing is, of course, a review and determination on the basis outlined of the propriety of existing competitive rates."

(p. 87, Exhibit 128.) In the view of Saskatchewan, transcontinental water competitive rates should be

subjected to these tests and procedures. Indeed, because of the importance of the long and short haul discrimination which inevitably follows from the institution of such rates it is our view that the most careful review be given to them by the Board and that such review should be a constant one in order to determine the continued necessity therefor.

The Province of Alberta has brought sharply to the attention of the Commission in its long and short haul submission an important element in our present freight rate structure which points up the manner in which geography imposes upon an inland area a greater burden for the maintenance of the national transportation system than mere distance justifies. And this is vitally important -- even with the most rigid control practicable of those competitive rates which create long and short haul discrimination there will still remain important discrimination against the prairie provinces as compared with the transcontinental rates to the coast. Thus, it is seen that having reached the limit of what can be done in this regard within the rate structure itself, some further device is necessary if an equitable distribution of the burden of maintaining our railway system is to be achieved.

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We quite realize that so far as water compelled rates are concerned, they are competitive rates and naturally will exist. Perhaps the difference between us and Alberta is not that we do not regard the problem as there but so far as we are concerned, as I suggested yesterday in the matter of competitive rates, we say as we have said here that the board should investigate; and when the rate is applied for there should be supporting data. Then it should only remain in force if it is established to the satisfaction of the board that it is a just and reasonable rate and one that should remain in force. We are asking that all these rates, including the transcontinental rates, be reviewed.

THE CHAIRMAN: Is the gist of the objection to these transcontinental rates this: because of their existence at a low level, the railways have to ask for higher rates for local traffic?

MR. MACPHERSON: That is one of the reasons.

THE CHAIRMAN: That is the only one?

MR. MACPHERSON: That is right.

THE CHAIRMAN: As a remedy, you are not asking that those transcontinental rates be raised?

MR. MACPHERSON: No. We are not asking for that. But we are asking that they be reviewed and investigated by the Board of Transport.

THE CHAIRMAN: To see whether they are necessary?

MR. MACPHERSON: To see whether they are necessary.

THE CHAIRMAN: As competitive rates.

MR. MACPHERSON: That is right; because the result of the rates being low is that the rates are consequently higher to prairie points such as, for instance, Regina, Edmonton, Calgary and Winnipeg.

THE CHAIRMAN: Yes. If you have any grievance, that is what it is.

MR. MACPHERSON: That is what it is.

(Page 21766 follows)

THE CHAIRMAN: You are not satisfied that these transcontinental rates are really justifiable at their present level?

MR MACPHERSON: No; we say that the transcontinental rates should come under review and examination by the Board.

THE CHAIRMAN: It may be possible to increase them without losing the traffic.

MR MACPHERSON: That is right.

THE CHAIRMAN: I see.

MR MACPHERSON: Developmental Lines

I would call the attention of the Commission to the evidence given at Regina by Mr. Brockelbank, the Minister of Natural Resources, the representative of the "Fill the Gap" Association and by the Rural Municipality of Coulee. This evidence dealt with railway lines in Saskatchewan, extensions of which were suggested or which had been promised and where gaps existed that should be filled. Of the lines in the northern part of the Province, many are in the category of development lines, keeping in mind particularly the fact that the Precambrian Shield runs through that part of the country and that mineral development is almost certain to come.

THE CHAIRMAN: When you speak of the lines in the northern part of the province, you mean those already there, do you?

MR MACPHERSON: Not only those that are already there but those that are projected.

THE CHAIRMAN: Projected now by the railways?

MR MACPHERSON: Yes, or that have been. For instance, Mr. Chairman, in the programme during the twenties, when projects were undertaken by the railways, there was a great deal of building going into northern

Saskatchewan and planned and approved which was never proceeded with. Now, it may be that there will be development in that country north of North Battleford, north of Prince Albert, which will mean from the standpoint of mineral development that lines should go in. There are all sorts of possibilities in that country, and perhaps not in this generation but certainly sometime they will be developed.

The other cases dealt with the desirability of completing gaps and providing service. As the situation now stands with many of these lines, there is no agency to whom complaint can be made by local residents who may feel that they have a grievance.

THE CHAIRMAN: The kind of grievance you mean is the delay in the building of them; is that it?

MR MACPHERSON: The delay in the completing, or the delay in filling the gap.

Surely any group of citizens who feel they have a grievance in this connection should have a forum to whom they could take that grievance. In order that such a forum be established we recommend amendment to the powers of the Board to read as follows -- now, this is an amendment to the powers of the Board:

"Add the following to section 33(1):"---

THE CHAIRMAN: Just a moment. 33(1) in the Act now?

MR MACPHERSON: Yes, my lord.

THE CHAIRMAN: That is the Act that gives jurisdiction.

MR MACPHERSON: That is right, my lord.

THE CHAIRMAN: "The Board shall have full jurisdiction to inquire into, hear and determine any application by or on behalf of any party interested," --

Now, you would add this.

MR MACPHERSON: "(c) requesting the extension or completion of a railway line or lines into or through a new or proven area, and, on the determination that the extension or completion of such line or lines shows reasonable promise of making a contribution to the local or national economy, may recommend the extension or completion of such line or lines; such recommendation may be made to a railway company or companies or to the Government of Canada."

THE CHAIRMAN: Do you think you would be getting very much further ahead by your recommendation?

MR MACPHERSON: Well, maybe not; I don't know that you would; but I do not feel like asking the railway companies to subject themselves to---

THE CHAIRMAN: That may be. I am not reaching out for jurisdiction, but it may be that is the kind of recommendation we would be expected to make as a result of this inquiry, may it not?

MR MACPHERSON: It might be, my lord, yes. In any event, there is a situation there that exists certainly in our province, as the evidence showed.

THE CHAIRMAN: I could understand if you were to say that this Board should order the railways to do this and that.

MR MACPHERSON: Well, we have not gone that far, my lord.

THE CHAIRMAN: You ask them simply to recommend to the railways to do it.

MR MACPHERSON: That is right.

THE CHAIRMAN: And you have already recommended to the railways to do it, and perhaps interested people like Members of Parliament and so on have recommended to

the railways to do it. Would another recommendation be very useful?

MR MACPHERSON: Well, we could strengthen that and have the Board make an order; but I have not gone that far in the suggestion.

COMMISSIONER ANGUS: Mr. MacPherson, are you contemplating that the railway should be under some increase of moral pressure to deviate from the principle Mr. Fairweather explained, of expecting a developmental line to show a reasonable prospect of repaying the railway the interest on the construction cost and all the rest of it?

MR MACPHERSON: No; I think his proposal would be fair, and we have that -- "shows reasonable promise of making a contribution to the local or national economy."

THE CHAIRMAN: You want the Board to be satisfied that there is a reasonable promise.

MR MACPHERSON: That is right.

THE CHAIRMAN: Suppose you do satisfy the Board, you still would have to satisfy the railway.

MR MACPHERSON: Yes. Well, I quite realize that all that is in here is recommendation, but I hesitate to provide in here that there be a mandatory order made by the Board.

COMMISSIONER ANGUS: There are two distinct reasonable promises. One is the reasonable promise that Mr. Fairweather mentioned, because of the financial return to the railway, and this is a reasonable promise of a contribution to the local or national economy. Now, those are not identical.

MR MACPHERSON: Yes, but they would have to be wrapped up with one another. I cannot see that there would be a real reasonable promise of a contribution to the local

or national economy unless it was going to be reasonably remunerative to the railway. To my mind the two would have to hang together.

COMMISSIONER ANGUS: Well, would you modify this to the extent of suggesting that the line should be built without any pressure on the freight rate level to reimburse the railways?

MR MACPHERSON: I am not sure that I understand your question, Dr. Angus.

COMMISSIONER ANGUS: Well, supposing that the Board asking a railway to construct a line involved some detriment to the railway's revenue prospects, it might not unreasonably be expected to make good that detriment by authorizing some increase in freight rates in general. Now, if there could be no question about that, then the advice could be given or the request could be made only on the expectation that the developmental line would be financed on the existing---

MR MACPHERSON: I do not think, Dr. Angus, that there should be any effect on the general rate structure. So far as the building of the road itself is concerned, the building of a developmental line, the mere return from the line itself could not be expected to pay for the line, but there would be probably the long haul -- what would come off that line would have to travel over the lines perhaps for a great distance. I have in mind Northern Saskatchewan; if there are these development lines, then anything that comes off these lines will have to travel not only over the length of the line that is built but will have to travel over a great deal of other road of the railways.

THE CHAIRMAN: Is not the theory behind the building of these developmental lines that eventually they

will pay their own way?

MR MACPHERSON: Yes. The theory is not only---

THE CHAIRMAN: Mr. Fairweather gave us to understand that.

MR MACPHERSON: That is quite right; but I do not think even Mr. Fairweather went so far as to say that they would pay their own way in the returns on the tonnage on the spur itself, from the branch line itself. It is keeping in mind the long haul or the length of haul---

(Page 21772 follows)

THE CHAIRMAN: All considered, they would turn out to be profitable eventually, isn't that it?

MR. MacPHERSON: That is right, they will be feeders to the main system. Now, my time is just about up and there is one section I would like to read before I close, and I ask that the rest of it be taken into the record. This is on the Hudson Bay Railway.

THE HUDSON BAY RAILWAY:

The Hudson Bay Railway, with a mileage of approximately 510 miles extending from The Pas to Churchill is of great interest to the people of the Prairies. It should be kept in mind that in respect of this road and its construction, while the cost of construction amounted to \$57,011,834.51, of that sum \$42,257,640 had been deliberately set aside for its construction and came, not from the Exchequer of Canada in the usual way, but from the proceeds of monies received from homesteaders who took up pre-emptions. (See pages 1205-06, Volume 7 of the Record). In certain areas of the West, the man who filed on a free homestead was entitled to take a pre-emption or an adjoining quarter section at a cost to him of \$3.00 per acre. This money was set aside for the construction of the Hudson Bay Railway. The people of Western Canada felt that it offered to them the nearest approach to the seaboard. Having regard to the fact that money from western lands was being applied for this purpose they were not satisfied until the railway was completed. The road has been completed; harbour facilities have been installed at Churchill; terminal elevator facilities exist there, and it is felt

in Western Canada that a full scale test has not been made of the road to establish it as an outlet for either export or for imports.

Now, on that question of a full scale test, the question came up before of what was a full scale test, and we have been urging those who are directly concerned, to make available and we had hoped it would be made available before this; but I will undertake to file with the Commission what they regard as a full scale test, because the Commission will remember that before the Commission at Regina that question arose.

THE CHAIRMAN: I saw by the papers that the Hudson Bay Railway Association were in Ottawa.

MR. MacPHERSON: Yes, they were in Ottawa just recently.

THE CHAIRMAN: They interviewed the Government with a view to having what you call a test here put into practice.

MR. MacPHERSON: They interviewed the Government and made a submission to the Government, and I have a copy of the submission here as made. I am not filing it unless the Commission would like to see it. It does not define full scale test in the sense that I think it should be defined so far as the Commission is concerned, but they deal with the general story and the submission has been made recently.

THE CHAIRMAN: Perhaps it would be profitable to you to let us have it.

MR. MacPHERSON: I will file this as a copy of the submission.

THE CHAIRMAN: There is already some material that you have given us at Regina.

MR. MacPHERSON: That is right, I will file this copy of the submission that was made to the Prime Minister by the Hudson Bay Route Association.

THE CHAIRMAN: All right.

MR. MacPHERSON: The Province of Saskatchewan is vitally interested in this Railway, and respectfully urges this Royal Commission to recommend a full scale test of the road to ascertain and determine the part that the Hudson Bay Route should play in the transportation system of the country. I might remind the Commission in this connection of the evidence given by Mr. MacNeill in Regina, which is to be found at pages 1203 to 1231, Volume 7 of the evidence.

I would ask that what remains of my written submission be taken into the evidence.

THE CHAIRMAN: On existing charters, are you asking that the railways be compelled to carry out the existing charters? I don't know, I haven't read it.

MR. MacPHERSON: Yes.

THE CHAIRMAN: Yes, you have an amendment.

MR. MacPHERSON: There is an amendment, 44A:-

"The Board shall within one year of the coming into force of this section review the charters, operating rights, leases and corporate form of all railway companies owning or controlling but not operating any line of railway in Canada and, considering the public interest and the desirability of simplifying the corporate form of railway systems in Canada, shall report to Parliament

and shall recommend such legislation as the Board may deem necessary and equitable."

THE CHAIRMAN: Then, does that amendment mean that you have in view lines already built or existing or those not operated?

MR. MacPHERSON: Yes, it means lines already built.

THE CHAIRMAN: Only? You see, you say:- "Review the charters, operating rights, leases and corporate form of all railway companies owning or controlling but not operating any line of railway in Canada...".

MR. MacPHERSON: Yes, well, at this time there are a great many, as the evidence showed, both in the Canadian National and the Canadian Pacific, a great many companies that are in existence.

THE CHAIRMAN: Now, they are lines that are in existence.

MR. MacPHERSON: They are lines which are in existence.

THE CHAIRMAN: And they are not operating?

MR. MacPHERSON: Yes, they are operating.

THE CHAIRMAN: You say here: "...owning and controlling but not operating...".

MR. MacPHERSON: That is, the railways are not operating.

THE CHAIRMAN: Somebody else is operating them?

MR. MacPHERSON: Yes, somebody else is operating them.

THE CHAIRMAN: Yes, I see.

MR. MacPHERSON: They are being operated by one of the other systems.

THE CHAIRMAN: When you say:-

"....considering the public interest and the desirability of simplifying the corporate form of railway systems...."

is that by amalgamation of these lines with the parent company?

MR. MacPHERSON: That is right

EXISTING CHARTERS:-

In the course of evidence, and particularly in the course of my cross-examination of Mr. Liddy, at page 17205, Volume 89, it would appear a great number of independent companies are being maintained in the Canadian Pacific system. In my cross-examination of Mr. Cooper at page 18856A and following pages in Volume 101, it appears that in the Canadian National system there are likewise many companies being maintained as entities. Undoubtedly the reason for this in many instances is to continue charters operating the rights and leases already in existence and it would not appear in the public interest that this should continue without some check to ascertain whether the commitments made by the railways, in consideration of which the charters were granted, are being discharged. In some instances, it may be that the existing corporate entities are maintained in order to preserve tax exemptions which were accorded individual companies in early days. In the interests of the communities through which these roads operate, there should be a complete review of these charters, operating rights, leases, etc. The Board should have power to do it and it is distinctly in the public interest that this should be done. We suggest as an amendment the

following: Add the following section after Section 44:-

"44A. The Board shall within one year of the coming into force of this section review the charters, operating rights, leases and corporate form of all railway companies owning or controlling but not operating any line of railway in Canada and, considering the public interest and the desirability of simplifying the corporate form of railway systems in Canada, shall report to Parliament and shall recommend such legislation as the Board may deem necessary and equitable."

GRADE SEPARATION:-

The Province of Saskatchewan is not generally favourable to the amendment sought by the railways in respect of grade separation safety devices. The Province is not opposed to the percentage paid by the fund being increased from 40 to 70 per cent, but feels this should be done only if the annual contribution to the fund is increased proportionately. As to the ceiling of \$100,000 being removed, Saskatchewan is opposed to this as it is conceivable that large and expensive projects in Eastern Canada would wipe out the whole fund or a great portion of it if there was no ceiling. The Province is likewise opposed to any amendment which will enable the railways to avoid responsibility of enlarging existing subways some of which were erected to suit the convenience of the railways more or less as temporary affairs and which have never been put in proper shape. In construction of subways or over-passes on the Prairies, the requirement that the

existing crossing be completely abolished is difficult to meet with municipal control always to be considered. This results in many instances in the complete defeat of the province's right to participate and the whole cost is borne by the Province.

The Province is likewise opposed to changing in any sense the responsibility of the railways as of any given date, and feel that the present provisions should apply. The Province does not regard the extra use of the highways as any argument in favour of the railways' contention, as in the last analysis the danger is created by the trains running on the road. The fact that more people are affected does not in any sense mean that the danger is not still occasioned by the instrument of the railways.

Our views are in line with those of Manitoba.

REPARATIONS:

The Province of Saskatchewan is not favourable to provisions being made for reparations or repayment of freight paid as requested by the Canadian Manufacturers' Association. We do not regard repayment, under these circumstances, as repayment to that individual who pays the freight, and we can see no reason why the Canadian Manufacturers' Association should be repaid monies that it has already received from consumers in Western Canada. While there are cases where properly there might be reparations, in too many instances, if provision was made for reparations, payment would be claimed by and made to the shipper who had already in his price collected the higher freight rate from the consumer.

CROW'S NEST RATES:

The evidence and argument of Saskatchewan and the

adjoining Prairie Provinces on this question is on the record in Volumes 104, 105 and 108. The Commission's attention is directed at this time to these Volumes and to page 91 of the Submission of Saskatchewan (Exhibit 128).

C.N. - C.P. CO-OPERATION:

Saskatchewan adopts the argument of Manitoba on this subject.

TRUCK REGULATION:

Our position with respect to this matter is embodied in the amendments to the Transport Act which we have proposed.

I would suggest Mr. Chairman, that all Saskatchewan's proposed amendments be taken into the transcript at the conclusion of my portion of the argument in order that they may be available for the easy reference of the Commission

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I do not think that there are any more courageous people in Canada than the people of Saskatchewan. I do not think that anywhere you will find people more loyal to their Province, more determined to carry on and more convinced as to the fertility of the soil and of certain general advantages that the country affords. However, having regard to what I have said as to location and distance from markets, and distance from sources of supply, the keen competition that exists in world trade, the fact that we are so close to the great republic to the South which presently is encouraging production on the land in so many ways; all of these considerations together

with the fact that we are so completely dependent on railways as a means of transportation in and out causes us to regard the future with anxiety, and in so stating we do not wish to indicate in the slightest degree that there is any spirit of defeatism abroad in our province.

We feel that with a national transportation policy which will take into consideration our proper place in the national economy and which will recognize how for us our place has been fixed by national policy in the past for which we were not responsible in our generation, then we can hope to make that contribution to Canada which we can so well make. We are an agricultural province, our prosperity depends on world demand for our products, whether it be wheat, livestock, livestock products, butter or eggs, and we can produce these commodities of a quality second to none in the world, and all we want is the opportunity to compete for world trade on a reasonable and equitable basis.

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MR. MacPHERSON: Now, my lord, there were some amendments that I have not referred to that were submitted, and I would ask that these be filed. They have already been before the Commission.

THE CHAIRMAN: These are amendments?

MR. MacPHERSON: They are further amendments, yes.

THE CHAIRMAN: We should have had a chance to discuss them somewhere.

MR. MacPHERSON: Well, I have tried to discuss everything I could in the time. I wish to thank the Commission for the patience with which they have listened, not only to myself but to Mr. Cronkite.

THE CHAIRMAN: Thank you.

COMMISSIONER INNIS: Mr. MacPherson, I would like to raise one question. Your estimate of the compensation is 40 million, as I understand it?

MR. MacPHERSON: That is the estimate in respect of the compensation under the Maritime Freight Rates, that was the estimate.

COMMISSIONER INNIS: Now, the scheme put forward by Manitoba, if one assumes that the Canadian National has the same passenger deficit as the Canadian Pacific, would be 56 million?

MR. MacPHERSON: That is right.

COMMISSIONER INNIS: But it would apply to the whole of Canada rather than ----

Mr. MacPHERSON: Western Canada. The forty million estimate that I think Mr. Cronkite made had to do with the compensation subsidy, not the deficit subsidy. I cannot conceive of it above that, but forty million was the estimate that he made. What

Manitoba suggested was a subsidy in respect of passenger traffic, and that in respect of the C.P.R., judging from the evidence we had, would amount to 28 million and would amount to 56 million if - -

THE CHAIRMAN: On passenger traffic alone?

MR. MACPHERSON: On Passenger traffic alone, yes.

THE CHAIRMAN: What is the annual cost of the subsidies under the Maritime Freight Rates Act. 5, 10 million?

MR. COVERT: I think, sir, they have averaged somewhere around \$5 million. During the war years they were higher, and I think they have been a little higher than that since, and I suppose since Newfoundland has come in they are considerably larger.

THE CHAIRMAN: Anyhow, the adoption of this scheme would mean very great annual subsidies to the railways.

MR. MACPHERSON: That is perfectly correct, my lord.

THE CHAIRMAN: Do you think the public would be satisfied to keep on paying these very large sums of money in subsidies to the railways when they don't own them themselves?

MR. MACPHERSON: Well, the question so far as our country is concerned is simply this. We have to have the railways, we are absolutely hopeless and helpless without the railways, and the economy of the country, we suggest, cannot bear the annual panacea that the railways offer to meet the situation, that is, higher freight rates. Thank you, Mr. Chairman.

(Amendments submitted by Mr. MacPherson follow)

SUBMITTED BY MR. MACPHERSON :AMENDMENTS TO THE TRANSPORT ACT:

- A. Section 2(1) (h) -- Insert the word "highway" after the word "water" in the second line thereof.
- B. Section 2(1) (o) -- Insert the words "by highway" after the word "water" in the second line thereof.
- C. Add the following definition as section 2(1) (s) --
"transport by highway" means the transport of goods or passengers for hire or reward by means of trucks or other highway transport vehicles.
- D. Add the following as Part III:

PART IIITRANSPORT BY HIGHWAY

13.(1) The Board may license trucks or other highway transport vehicles to transport passengers and/or goods between specified points or places in any province of Canada and other specified points or places in any other province or provinces.

(2) The licence may be issued in the name of the owner, lessee or other persons entitled to engage in transport by highway by means of such trucks or other vehicles.

(3) The licence may apply to one or more truck or other vehicle.

(4) The Board may in the licence prescribe the route or routes which the trucks or other vehicles named therein may follow and the schedule of services which shall be maintained.

(5) The Board shall not issue a licence without

being first satisfied that the proposed service is and will be required in the public convenience.

14.(1) No goods or passengers shall be transported by highway by means of trucks or other vehicles from a place or point in one province to a place or point in another province otherwise than by a truck or other vehicle licensed under this Part.

(2) If any goods or passengers are transported contrary to the provisions of this Part or otherwise than in accordance with the terms of the licence, the owner or other person operating the truck or other vehicle shall be liable upon summary conviction to a fine not exceeding five hundred dollars.

(3) If any licensee is convicted of an offence, under this Part or if the Board is satisfied that a truck or other vehicle is operated otherwise than in accordance with the terms of a licence applicable thereto, the Board may suspend or cancel the licence of such licensee in respect of one or all of the trucks or other vehicles licensed.

15. Nothing in this Part shall be deemed to interfere with the full right of any province to control the highways of that province nor to exact licence fees in respect of trucks or other vehicles using the highways of the province.

* * * * *

AMENDMENTS TO THE RAILWAY ACT

A -- Repeal Section 25 and substitute the following section:-

25. Such other accountants, economists, engineers, rate experts and other employees as are necessary for the proper conduct of the business of the Board may be appointed in the manner authorized by law.

B -- Repeal section 31(1) and substitute the following sub-section:-

31(1) The Board shall, on or before the thirty-first day of March in each year, make to the Governor in Council through the Minister, an annual report for the year ended on the preceding thirty-first day of December. Such report shall contain,

(a) a review, for the previous year, of the financial condition and requirements of Canadian Railways, the condition of railway property, railway expansion, abandonment of lines, activities of the Board, organization and personnel of the Board, investment of Railway Companies in non-railway investments and business, railway charters, railway leases, ownership and control of Canadian Railways, ownership and control by Canadian Railway Companies of railways in other countries, co-operation between Canadian railways and co-operation and integration with various forms of transport;

- (b) recommendations of the Board as to legislative amendments relating to railways as may be considered necessary in the public interest;
- (c) such other information or recommendations as may appear to the Board to be in the public interest.

C -- Add the following to section 33(1):

- (c) requesting the extension or completion of a railway line or lines into or through a new or proven area, and, on the determination that the extension or completion of such line or lines shows reasonable promise of making a contribution to the local or national economy, may recommend the extension or completion of such line or lines; such recommendation may be made to a railway company or companies or to the Government of Canada.

D -- Add the following section after Section 44:

44A -- The Board shall within one year of the coming into force of this section review the charters, operating rights, leases and corporate form of all railway companies owning or controlling but not operating any line of railway in Canada and, considering the public interest and the desirability of simplifying the corporate form of railway systems in Canada, shall report to Parliament and shall recommend such legislation as the Board may deem necessary and equitable.

E -- Add the following section after Section 78:

78.A.(1) It shall be unlawful for any railway company to issue any share of capital stock or any bond or other evidence of interest or indebtedness of the railway company or to assume any obligations or liability as lessor, lessee, guarantor, endorser, surety or otherwise in respect of the securities of any other person or corporation, unless and until authorization has been given by the Board.

(2) The Board shall make investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability. The Board shall approve an application for such authority only if it finds:

(a) it is for some lawful object within its corporate purposes and compatible with the public interest and that it will not impair its ability to perform service to the public as a railway;

(b) it is reasonably necessary and appropriate for such purpose.

(3) The foregoing provisions of this Section shall not apply to notes to be issued by the company maturing not more than two years after the date thereof and aggregating (together with all other then outstanding notes of a maturity of two years or less) not more than 5% of the par value of the securities of the carrier then outstanding. In the case of securities having no par value,

the par value for the purposes of this paragraph shall be the fair market value as of the date of issue.

F -- Add to section 127 as subsection (2):

(2) It shall be unlawful without the approval of the Board for any railway company regardless of the terms of its charter or Act of incorporation, to pay dividends out of any fund other than its accumulated earnings, and specifically it shall be unlawful to pay dividends out of capital or out of donated surplus, or out of land grant surplus, or to grant any special rights or benefits to shareholders.

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G.--Add the following sections after section 147:

147. A(1) No railway company shall, after the coming into force of this section, acquire ownership or control of any non-railway company or permanently invest its funds in any non-railway company or activity, except with the approval and authorization of the Board.

(2) For the purpose of this section:

- (a) control shall be construed to mean actual as well as legal control, whether maintained or exercised through a holding company or investment company or companies, or through or by any other direct or indirect means, and to include the power to exercise control.
- (b) non-railway company shall mean any company whose principal purposes and/or operation is a non-railway activity.
- (c) non-railway activity shall mean any business activity or operation not reasonably related to that of a railway company, and as may be defined from time to time by the Board, but shall not include the operation of an express agency, a communication system, hotels, railway terminals, bridges, ferries, inland steamships, coastal steamships, highway trucking, buses or other modes of land transportation.
- (d) permanently invest shall not mean the investment of surplus or special funds in government, utility or industrial securities provided that the investment of surplus funds does not result in substantial or full control of any other company.

(3) Before approving of any application for an investment described in this section the Board shall consider the

effect on other railways and the public interest generally.

H.--Add the following section after section 153:

153. A.(1) Subject to the provisions of the three preceding sections it shall be lawful only with the approval and authorization of the Board for two or more railway companies to merge their properties or franchises into one corporation for the ownership and/or operation of their railways or for any railway company to purchase, lease or contract to operate the properties of another or to acquire control or ownership of another through ownership of its stock or otherwise; or for a person which is not a railway company to acquire control of two or more railway companies through ownership of their stock or otherwise.

(2) The authorization of the Board shall be given only after full enquiry into the probable effect of the proposed transaction on the financial structure of the railway company or companies concerned, and on the public interest generally.

I.--Add the following section after section 325:

325. A. On any application by the railways for a general increase in freight rates the Board, if it finds that the railways require further revenue for their efficient operation, may either;

(a) order such general increase as it finds is necessary; or

(b) recommend to the Government of Canada that any additional sum so required be paid by the Government to the railways or to any specified railway, in whole or in part.

J.--Repeal section 332 and substitute the following section:
332. (1) Competitive tariffs shall be filed by the company with the Board and every such tariff shall specify the date of the issue thereof and the date on which it is intended to take effect and the Board shall, immediately upon filing, investigate to determine if such tariff is a proper tariff, and if it so finds the tariff shall be continued, otherwise such competitive tariff shall expire thirty days from the date of issue thereof.

(2) The Board shall review all competitive tariffs now in force to determine whether or not all such tariffs are proper tariffs within the meaning of this Act and such review shall be completed by the first day of January, 1952. Any tariffs found not to be proper tariffs shall be forthwith cancelled.

K.--Add the following heading and section after section 378:

Accounts

378. A (1) The Board shall prescribe:

- (a) a uniform system of accounts applicable to all railway companies and the manner in which accounts shall be kept;
- (b) the method of charging depreciation; the class of property to which depreciation shall apply and the rate of depreciation charges in every instance.

(2) The Board may exempt from the operation of this section any railway company with a mileage of road of not more than one hundred miles.

THE CHAIRMAN: I believe you represent Alberta, Mr. Frawley?

MR. FRAWLEY: That is right, my lord. My lord and members of the Commission, before beginning may I just take a moment to say that on behalf of the Province of Alberta I want to express the confidence which our people have in the appointment of this Commission. There are two things that impress me that I want to say. Firstly, that the Commissioners which the Government of Canada appointed were of the very highest calibre; but secondly, that the Commissioners have had very inquiring minds, and it augurs well for the result of their deliberations.

This is an exceedingly important Commission for the people of the Province of Alberta, and I think it is not too much to say that it is exceedingly important to the future of our railways too. As far as I am concerned, representing Alberta, I have every confidence that the deliberations of this Commission will result in great good to the people I represent, and, I am sure, to the railways of Canada also.

Now, my lord, my submission will deal with quite a few rather particular matters, but I have two opening sections. The first one is on the "Economic and Geographic Background of the Transportation Problem"; the second one, "National Transportation Policy". Having disposed of those, then I go directly into such matters as "Equalization", "Distributing Rates and Town Tariffs", "Class Rates Between Eastern and Western Canada", "International Rates", "Competitive Rates", "Long and Short Haul Rule", "Interline Rates", "Industrial Location and the Freight Rate Structure".

Then a section which I have called "Other Rate Anomalies"; then a very brief section entitled "Freight Classification" and related matters; then a section on the financial aspects of the Commission's terms of reference; then a short concluding section which I have called "Miscellaneous".

Now, dealing at once with the first section:-

PART I

ECONOMIC AND GEOGRAPHIC BACKGROUND OF TRANSPORTATION PROBLEM

At the very opening of the Alberta case before this Commission, Vol. 11, p. 1916 to 1931, Premier Manning outlined the three major aspects of the transportation problem as it exists in Alberta. He said they were the geographic, the economic and the national policy aspects. I shall not attempt to draw any fine distinction between those circumstances which are geographic and those which are economic.

(1) Alberta, in so far as transportation is concerned, is a non-competitive area but it is linked in the same economy a the same transportation system with areas that are highly competitive. In other parts of Canada much of the competition has been described as "natural", due to natural waterways and to short overland distances in a densely-populated area. But side by side in these areas much competition flourishes as a direct or indirect product of national policy. For example, the canal system built by the Government of Canada and the elaborate highway systems which the concentration of wealth, industry and population in the Central Provinces has made possible. It is true that the growth of highway transport in Alberta is today for the first time creating an element of competition in transportation. However, the extent

and nature of this competition do not affect the truth of the general statement that Alberta is a non-competitive area. To date this new competition has made itself felt merely on local traffic movements. Distances, mountain barriers, and the comparatively small mileage of hard-surfaced roads, have prevented competitive inroads on the great volume of traffic originating or terminating in Alberta, namely, the traffic which moves to or from other provinces or outside the country altogether.

Alberta is seriously concerned with the regional incidence of freight rates. She is linked in a trans-continental transportation system with other areas that enjoy the benefits of competitive transport facilities. And Alberta contributes through freight rates to the support of that system.

Justifiably, there has been apprehension in our province that areas more favoured by competition are deriving added advantages through their ability to shift the general burden of transportation costs to non-competitive areas. This apprehension is not limited to a question of whether or not the competitive rates are compensatory to the railways. This is so because a lower rate structure in one region acts as a powerful attraction to new enterprise and develops a greater density of traffic, and by developing greater density of traffic may more than compensate for reduction in rates.

This creates "the vicious circle" to which Mr. Manning referred in his statement to the Commission at p. 1928 of the Transcript.

(2) The second factor I wish to touch upon is that of distance. The Canadian economy has never been a self-sufficient economy. It is highly specialized. Alberta

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as a part of the Canadian economy exhibits in more extreme form that characteristic specialization in production. Alberta is an area of primary production -- overwhelmingly agricultural but with mineral, forest and fishery developments as well. Markets are located overseas or in the industrial areas of Eastern Canada and the Eastern United States. Only within comparatively recent years has there been the prospect of a sizeable market on the Pacific Coast. To reach all of these markets long rail hauls are required, together with ocean hauls in the case of overseas markets.

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A similar situation exists in the case of the goods which Alberta buys. Those goods are manufactured wholly or in part in Eastern Canada or in the United States and must move to Alberta by rail. To the extent that Alberta traffic must move over greater distances, Alberta must expect to pay higher rates than areas located closer to their chief markets and sources of supply. We make no complaint concerning higher rates resulting from these circumstances alone. We are not asking the removal of distance as a factor in transportation costs, but the cost of linking East and West in this country cannot fairly be assessed on the distance basis alone.

There are examples of unjustifiably high charges being applied to the longer hauls. One such example is the present class rates between Eastern Canada and Alberta. (Transcript - Vol. 58 - pp. 11133 to 11135 and pp. 11266 to 11289.)

I will deal with that in more detail later.

(3) The third factor of importance to us is the effect of transportation costs on the position of Alberta primary industries and of the Alberta consumer.

With regard to the incidence of freight rates on our primary industries, much has been said before this Commission. In my submission nothing that has been said seriously challenges the general proposition that, for example, the Alberta farmer selling wheat in the world market or the Alberta lumber industry selling lumber in Eastern Canada must in the long run bear at least the additional freight charges over their competitors located closer to the market.

With regard to the incidence of freight rates on goods manufactured in Eastern Canada and sold in

Alberta, there is nothing to indicate that the Eastern manufacturer is ever forced to absorb freight charges. Even the existence of secondary industries in Alberta or in other parts of Western Canada is not sufficient to force the absorption of freight. In most cases such industries are small in scale and draw essential supplies from Eastern industries.

THE CHAIRMAN: With regard to the preceding paragraph about world markets and the cost of getting Alberta wheat to those markets, Mr. Sinclair, when he was addressing us, said that the evidence shows that mid-west Canadian wheat does get to world markets, all considered, just as cheaply if not more cheaply than wheat from competing countries. You said that?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Have you looked into that since? Have you anything to say?

MR. FRAWLEY: Not since the argument about the Crow's Nest rates.

THE CHAIRMAN: I think that was a part of the original consideration, that this particular wheat was being grown in the middle of a continent and at a very great distance from seaboard and consequently from overseas markets, and that it did not matter really from that point of view who was actually paying the transportation, but it did make the wheat more expensive on the markets. That was the handicap. According to the argument addressed to us by Mr. Sinclair all that has disappeared now with changing conditions so that wheat, let us say from the Argentine, does not get to Liverpool for any less freight than wheat from Alberta. Have you looked into that since?

MR. FRAWLEY: I must confess I have not given

that any thought. I must confess I subscribe --

THE CHAIRMAN: This paragraph is founded on the supposition which has been taken for granted up until recently at least that in fact our wheat was made more expensive by its geographical location.

MR. FRAWLEY: Than wheat from the Argentine.

THE CHAIRMAN: From competing countries, Australia, the Argentine, wherever they may be, Russia, and so on.

MR. FRAWLEY: I certainly personally --

THE CHAIRMAN: Take, for instance, the Argentine where the wheat is all near the seaboard. I think the longest railway haul is 186 miles. In former times once you got the wheat on board a ship a thousand miles more or less did not really matter much. Ship transportation was so cheap but we are told all that is past and that sea transportation is no longer cheap. Those countries which are near seaboard no longer enjoy relatively inexpensive transportation which they enjoyed before the war, let us say.

MR. FRAWLEY: Did Mr. Sinclair go so far as to say that notwithstanding the fact that the rail portion of getting Argentine wheat to market to Liverpool was less than to get wheat from Regina to Liverpool, notwithstanding that the rail portion was less --

THE CHAIRMAN: In mileage.

MR. FRAWLEY: In mileage.

THE CHAIRMAN: Wheat in that country is grown nearer to accessible ports.

MR. FRAWLEY: But when you add the rail haul to the boat haul --

THE CHAIRMAN: The fact is that in the old days the boat haul did not cost very much.

MR. FRAWLEY: That is true, and the boat haul now costs more, presumably.

THE CHAIRMAN: Now costs have been enhanced. I think the trend of Mr. Sinclair's statement was that considering the increased costs now of sea transportation it is no longer more expensive for Canadian wheat to get to Europe than for other wheat. You said that?

MR. SINCLAIR: Yes, on the average and on the trend.

MR. FRAWLEY: I do not recall --

THE CHAIRMAN: Since you heard Mr. Sinclair make that statement I wondered whether you had gone into the matter.

MR. FRAWLEY: I am not reflecting on Mr. Sinclair's argument, but I do not recall any evidence of what the boat rates are, to what extent they have increased, or any evidence of the rail haul in the Argentine. I think, with respect, that Mr. Sinclair was probably drawing conclusions which he felt warranted in concluding.

THE CHAIRMAN: You see the point is you may have a very excellent commodity but if it is hidden away somewhere so far away from markets by the time you get it on the market nobody will buy it. It is too expensive. That used to be thought at one time of our western wheat but we are told that is no longer the case, that it gets to Europe for no more in transportation costs than other wheats

MR. FRAWLEY: All I say is, dealing with the world situation, that the Alberta farmer selling wheat in the world markets must in the long run bear at least the additional freight charges over his competitors located closer to the markets. What I mean

is if there are additional freight charges he must pay them, and without research that was not available to me and may have been available to Mr. Sinclair --

THE CHAIRMAN: The other question of who pays the transportation costs is interesting in itself.

MR. FRAWLEY: Yes, it is.

THE CHAIRMAN: We used to take it for granted that we were under a very considerable handicap on account of our location, the longer railway hauls which no other country has to put up with, and then in addition the sea haul.

MR. FRAWLEY: I would think the research staff of the Commission could get quite close to that problem. I appreciate your lordship has asked me whether or not I have given it any thought since that time, and I have to say I have not, but I assume it is a matter that can be verified by actual consultation of the statistics.

(4) The effects of national fiscal policy on Alberta and on the Western economy constitute a fourth factor. This policy has encouraged the movement of traffic between Eastern and Western Canada, and by so doing has secured to the transcontinental railways a large volume of traffic. The policy has also provided the Eastern manufacturer with a protected market. Although some such policy was inevitable if Canada was to become an economic unit, there remains as a continuing responsibility of the national government the fair apportionment regionally of the advantages and disadvantages of such a policy.

Western Canada has always contributed heavily to the annual exportable surplus upon which the economic growth of the country has been based. But Western

Canada has been able to attract few of the new industries which have grown up behind the shelter afforded by tariff policy. The West has remained a specialized agricultural exporting area and as such has occupied a position exposed to wide fluctuations in income. At the same time the incidence of freight rates is greater on the West than on other parts of the country. Tariff protection has been of great advantage to Central Canada. It has afforded protected markets for central Canadian industries and has virtually put Western Canadian prices on an f.o.b. Toronto basis.

It is somewhat disconcerting to note that the Canadian Pacific feels it must participate on its own initiative in furthering what it conceives to be the national fiscal policy. At page 105, Part I of its Brief, the Canadian Pacific argues that there was no valid reason why rates on merchandise entering Western Canada from the United States should be on the distributing basis, rather than on the standard mileage rates. The excuse offered for this treatment of international rates was that --

"In many cases such merchandise is in direct competition with similar goods produced at points in Canada."

THE CHAIRMAN: Is this one of the few cases where the freights actually charged are ceiling rates?

MR. FRAWLEY: Yes, when it leaves the border, that is one of the few cases, and I go into that in some detail when I am discussing international rates.

This would seem to indicate an interesting community of interest between Eastern industry and the transcontinental railways -- the tariff acts as a first

line of defence in the Western market, but where that is insufficient, high freight rates from border points are apparently a second line of defence. Our objection is not addressed to the efforts being made to allow Eastern plants to reach Western markets more easily, but to the method that would achieve this by hampering or shutting out competition.

We emphasize again that all the consequences of national fiscal policies must receive consideration in balancing the regional advantages and disadvantages.

(5) The final factor to which I would draw attention is the existence of certain prominent institutional conditions and their effect upon regional transportation problems.

One such condition is the centralization of control of industrial activity in Central Canada. These organizations follow a national policy of their own with the normal objective of realizing the largest profit on the enterprise as a whole. Such policies, while they may be quite proper from the standpoint of the industries' own pecuniary interest, are frequently at variance with regional interests. I would refer the Commission to page 13317 where at the prompting of railway counsel I read into the record the view of the Canada Cement Company regarding its responsibility to its customers in Alberta in the matter of inter-line rates.

The importance of this matter to national transportation policy lies in the fact that the system of regulation practised by the Board of Transport Commissioners since its establishment has been based not on the exercise of its own initiative to lay the foundation of a reasonable rate structure but rather on the wholly negative policy of waiting for complaints

from so-called interested parties -- which in practice in the majority of cases means the parties directly dealing with the carrier. The fact that freight rates are ordinarily passed on to the consumer or passed back to the primary producer greatly affects the degree of interest which the shipper or the consignees may have in the removal of rate grievances. When the policy of the shipper or consignee is formulated for them at a head office in Toronto or Montreal, concern for regional rate anomalies will be very slight indeed.

What I have said regarding centralization of policy in industry applies with equal weight to the transcontinental railways themselves.

It is for this reason that Alberta has stressed the importance of the role of the Board in any effective policy of regulation. The Board must in a positive and active fashion set up a just and reasonable rate structure. The Board should not permit anomalies to persist over the years merely because of the lack of concerted pressure for their removal.

(Page 21805 follows)

I now pass to what I call the National Transportation Policy.

NATIONAL TRANSPORTATION POLICY

Alberta is of the opinion that the national transportation policy should assure the provision of an efficient railway transportation system, the costs of which are shared equitably by all regions in Canada. Such an equitable sharing of the burden of transport cost requires adequate control over the rate structure of the railways.

The extent to which competitive railway traffic has increased in the past two decades indicates a need for more rather than less control over the rate structure. The unequal growth of competition in different regions raises an increasingly grave problem.

Furthermore, railway rate control in Canada must take cognizance of the virtual duopoly which exists. This fact re-emphasizes the need for adequate and comprehensive rate control.

The present Railway Act completely fails to provide adequate control over the freight rate structure. The Act is weak in those provisions which deal with rate regulation. As an example, during the past forty-five years what should be the most important phrase in that part of the statute dealing with rates - namely, the phrase "just and reasonable" has never been clearly defined. The Act does not even contain the positive requirement that rates be just and reasonable. I refer to Section 325 which at best makes only an oblique reference to this requirement.

I want to stop, my lord, and call to the attention of the Commission very briefly that section and what the Supreme Court of Canada said about it. Section 325, sub-section 5, as the Commission will recall, was added in 1925 and it reads as follows:

"Notwithstanding the provisions of section 3 of this Act the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates, and to change and alter rates as changing conditions or cost of transportation may from time to time require, shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada."

and so on. Your lordship will notice that there are no positive words there, in my submission. The words are "the powers given"; in other words, the powers which have been given, one might say, to the Board to fix, determine and so on. It is quite true that Mr. Justice Rinfret as he then was, the present Chief Justice of Canada, did say something in the case of Alberta versus Canadian Pacific Railway which is reported in 1931, Supreme Court Reports at page 656.

THE CHAIRMAN: What case was that?

MR. FRAWLEY: Alberta versus Canadian Pacific Railway, 1931, Supreme Court Reports, page 656. This is what Mr. Justice Rinfret said at page 668. It is just a phrase, and I will read it:

"The enactment of 1925 --"

That is, sub-section 5.

" -- begins by conferring on the Board powers of the most sweeping character, --"

then his lordship quotes:

"...to fix, determine and enforce just and reasonable rates and to change and alter rates as

changing conditions or cost of transportations may from time to time require-!"

All I want to say about that, my lord is that, with the greatest respect, there are no words in sub-section 5 conferring any power.

THE CHAIRMAN: But the words certainly assume those are the powers.

MR. FRAWLEY: Given elsewhere in the statute; that is right.

THE CHAIRMAN: But they say "the powers given to the Board under this Act to fix, determine and enforce just and reasonable rates" and so on. Then could the Board said, "No; we have no such powers"?

MR. FRAWLEY: No, my lord. I hope I am not drawing too fine a distinction. But I would say that Parliament is saying there the powers which have been given under this Act to fix, determine and enforce just and reasonable rates. My question is where in this statute --

THE CHAIRMAN: In that same connection you will not find any express language saying that the Board shall have power to fix and maintain.

MR. FRAWLEY: That is my submission.

THE CHAIRMAN: I think that is so.

MR. FRAWLEY: Yes.

THE CHAIRMAN: But it is implied that that is so. Have they not always acted on that assumption? As you say, the Chief Justice of Canada has placed the same interpretation on that.

MR. FRAWLEY: The Chief Justice of Canada was of the opinion that that enactment confers on the Board powers.

THE CHAIRMAN: I think it does confer powers although it may be, as you say, obliquely. It is there all the same. They are told very plainly there what their powers are.

MR. FRAWLEY: It is as if Parliament was saying "You have been given power" and then you may put in parenthesis "elsewhere in the Act."

THE CHAIRMAN: Do you want the Act amended?

MR. FRAWLEY: My point is that in all these years the statute has not specifically provided positively and substantially that the Board should fix just and reasonable rates.

THE CHAIRMAN: I think that is right, because I had occasion to look into the Act myself from that point of view and I found, just as you say, that section 5 has to be considered in that way. But I think it must be considered that they have power.

MR. FRAWLEY: I must say this against what I am now suggesting, that the first sub-section of section 325 says that the Board may disallow any tariff or any toll which it considers to be unjust or unreasonable. I quite agree that one can then say from that, that you can go to the Board and say, "Here is a toll which is unjust and unreasonable and the Board should disallow it"; and the Board has that power. I do not want to make my statement appear any more than to say that in all these years the statute has not specifically said that. We have to go to the oblique words of section 325 (5) or to section 325 (1). But I must agree that the Board has never hesitated to exercise this power under section 325 to disallow.

THE CHAIRMAN: You say this, that if the Board considered the rate was unjust, they could disallow it?

MR. FRAWLEY: Yes.

THE CHAIRMAN: The language here is that it "may". Do you think it worth while changing that "may" to "shall"?

MR. FRAWLEY: Oh, the Board may disallow. No. As long as the Board has the power, I think nobody could ask for any more than that.

THE CHAIRMAN: All right.

MR. FRAWLEY: I am reminded that we have an amendment, my lord, to section 329 which does contain some more direct language.

THE CHAIRMAN: Section 329?

MR. FRAWLEY: To section 329. I will come to that in due course. But I thought I would mention this other matter in passing.

THE CHAIRMAN: Very well.

MR. FRAWLEY: I go on to say as follows:

In addition, there is an inherent confusion between the concept of a rate which creates unjust discrimination and the concept of a rate which is unjust and unreasonnable.

The amendments which Alberta has submitted and which I will discuss in detail as my argument proceeds will, I trust, - along with amendments proposed by others which I support - remove the existing irregularities and discrimination.

Rate regulation will depend not only upon the effectiveness of the Railway Act, but also upon the effectiveness of the administration by the Board of Transport Commissioners.

It is essential that the members of the Board be men of competence and of judicial temperament. The membership of the Board unofficially represents regional and occupational interests.

THE CHAIRMAN: What is a judicial temperament?

MR. FRAWLEY: A judicial temperament, I dare say, is the temperament possessed by a judge.

Sometimes

THE CHAIRMAN: / it is said that a certain person has a judicial temperament; he hates work.

MR. FRAWLEY: I presume there are some who are not judges who have what is at least called the judicial temperament.

It is essential that the need for representation of these interests should not obscure the prime responsibility of such a body - namely, to fairly and competently administer the Act.

We are also of the opinion that the Board cannot discharge its responsibilities under the Act unless it has at its disposal the services of a well-trained staff of technical advisers.

What the Board possesses in the way of technical staff under to-day's negative administration cannot be a guide to what the Board will need under the new Railway Act which will result from this Commission's deliberations. The extended powers and responsibilities will require a vigorous, positive administration.

It is also apparent that in the absence of a well-trained technical staff the Board is not in a position to assess the economic effects of its decisions. This has led the Board to disclaim responsibility for the effect of its decisions and has emphasized its negative approach.

THE CHAIRMAN: Once again, are you asserting here that the Board should have economic considerations in mind in fixing rates or that it should be an economic body? That is what you are saying. That must be the inference unless you clear it up. You say:

"It is also apparent that in the absence of a well-trained technical staff the Board is not in a position to assess the economic effects of its decisions."

As I say, the Board has repeatedly said that that is not within their field of inquiry.

MR. FRAWLEY: Yes, they have said that.

THE CHAIRMAN: Do you want to change this, then? It is very important, you know; because all through we find assertions of that sort made, but when the consequent question

arises: "What do you want to do about it?" Do you want to make this Board an economic planning Board?", there is hesitation about answering it. What do you want us to do ^{to} or/recommend?

MR. FRAWLEY: We have not proposed any amendment to the constitution of the Board. It is rather difficult to say that the Board should become an economic planning Board. It is one of those matters we say they must have regard to; we ^{say} /that they must take more regard^{for} and that they must be more concerned about the economic effect of their judgments. But to say that they must be set up as a board which of necessity must plan, is rather difficult to say.

THE CHAIRMAN: How far do you want to go? You say: "It is also apparent that in the absence of a well-trained technical staff the Board is not in a position to assess the economic effects of its decisions."

MR. FRAWLEY: As far as we are concerned, I think we lay more emphasis on the staff which we think should be attached to the Board so that all of the economic consequences should be at least surveyed and present before the Board, especially in what we call their general decisions.

THE CHAIRMAN: You would have them take into consideration economic factors, would you? You must remember that it is a question of fixing rates.

MR. FRAWLEY: Primarily, yes.

THE CHAIRMAN: If they should make economic studies, through technical staff, of what the effect of their fixing rates is going to be, that is one thing. Do you want that?

MR. FRAWLEY: We have to go that far; yes, sir.

THE CHAIRMAN: How far are you going?

MR. FRAWLEY: We are willing to go that far.

THE CHAIRMAN: You say you would go that far?

MR. FRAWLEY: Yes.

THE CHAIRMAN: That is an important change in the jurisdiction which the Board now assumes it has.

MR. FRAWLEY: Yes. There is too much disclaimer now. I will go that far.

THE CHAIRMAN: You say they should be an economic planning board. Is that what you say?

MR. FRAWLEY: I am not disagreeing with your lordship just because you use that expression. On the other hand, it may mean, if they have the right sort of staff and the right kind of technical advisers --

THE CHAIRMAN: I am not expressing any opinion at all--

MR. FRAWLEY: No.

THE CHAIRMAN:--as to what ought to be done.

MR. FRAWLEY: No.

THE CHAIRMAN: I am just trying to probe what would be the result.

MR. FRAWLEY: I quite appreciate that, my lord. The expression "economic planning board" when I first heard it, caused a certain amount of revulsion on my part because I thought, "Now we are setting up a national planning board of some kind" and many other things came into my mind and I revolted somewhat from that.

THE CHAIRMAN: It may be all very well for the Parliament of Canada to create a national economic planning board.

MR. FRAWLEY: Yes.

THE CHAIRMAN: That may be all right. But whether that board should be the same board that fixes freight rates or not, is another matter.

MR. FRAWLEY: That is right. At the moment I do not go that far; and with great respect, I do not think

that, in order to make my submission, I have to go that far. I lay more stress on the kind of staff that would be attached to the Board and the knowledge and scientific investigation which that staff will bring to the Board before the judgments of the board are rendered. That will satisfy what I have in my mind, my lord.

COMMISSIONER INNIS: You think the Board has interpreted "just and reasonable" too narrowly. Is that, roughly, your point?

MR. FRAWLEY: Yes. I think what they have done is this. Our general submission is that they have merged it all into unjust discrimination. That is the burden of our submission.

I should like to stop and discuss the question, my lord, because I realize that it is a problem. I do not want to say, "Yes, I will have ^{it} an economic planning board." I am trying to bring my mind to bear upon the matter as seriously as I can. Having in mind the manner in which the Board has been arranged, I say that we may go further and suggest that kind of appointment be completely discontinued and that these men be not brought from various parts of Canada. Frankly, I have not given that matter sufficient thought. I have rather thought that the appointments will probably go on as they have in the past; not that I am suggesting they should. But it might appear ^{good to the Commission} and the Commission might recommend that that kind of recommendation or that kind of appointment be discontinued. But at the moment I put my store on the staff that would be attached to the board.

THE CHAIRMAN: But the staff must be there for a purpose; and that purpose, according to you, would be to advise the board about what would be the economic consequences

of their decisions in freight rate cases.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Is that right?

(page 21815 follows)

MR FRAWLEY: Yes, my lord. I think probably that states the position completely.

. . . the Board is not in a position to assess the economic effects of its decisions. This has led the Board to disclaim the responsibility for the effects of its decisions and has emphasized its negative approach.

THE CHAIRMAN: Mr. Frawley, still on that point, if you extend the duties of the Board in the way you say, that they must have before them expert advice as to the probable economic consequences of what they are about to do, then I suppose it would be all the more necessary to retain this appeal to the Privy Council.

MR FRAWLEY: Oh, yes.

THE CHAIRMAN: That would be the effect of that.

MR FRAWLEY: And I am suggesting that that appeal be not disturbed.

THE CHAIRMAN: I mean, it would be all the more necessary to retain it then, wouldn't it?

MR FRAWLEY: Yes.

THE CHAIRMAN: If you have an outside Board going along studying economic questions.

MR FRAWLEY: I think, my lord, that that is just about the way in which I have expressed it.

THE CHAIRMAN: The provinces concerned might not be satisfied with their determination of what economic conditions are.

MR FRAWLEY: If I might be excused to go to what I said on page N-5, I will read a short paragraph which I have later on when I am discussing section 52:

We might as well speak plainly about this matter. The people of Alberta would never be satisfied to have the Board of Transport Commissioners the one and final Court of

last resort without appeal. The railways are instruments of national policy.

THE CHAIRMAN: Not even if they had this highly-trained technical staff to advise them?

MR FRAWLEY : Oh, yes, my lord -- because of what I say here:

The railways are instruments of national policy. If questions of national policy arise, then it is for the policy-making body - the Federal Cabinet - to review and consider those questions and direct the Board accordingly.

THE CHAIRMAN: There, you see, on the one hand you say you would confer economic inquiry powers and duties upon this Board through their technical staff, and on the other hand you would say, after all, the Government must decide these questions because of national economic effect.

MR FRAWLEY: National policy comes in, and therefore I think the national policy-making body -- we really just have one in Canada, and that is the Governor-General in Council, and I think there must be reserved to him an overriding right to disagree with what the Board might say if they are dealing with questions involving national policy. I think that is consistent, my lord, with what I say about a well-trained staff---

THE CHAIRMAN: Would you say the Government likewise should have another technical staff which could advise them that the technical staff of the Board made a mistake?

MR FRAWLEY: Well, that raises a question as to whether or not the Government -- I am only assuming that the Governor in Council has access to unlimited technical advice that can be called in. For instance, when we go before them on these appeals, sir, we have no reason to suppose to the contrary at all, that the Governor-General calls in people and asks for their economic advice and

financial advice.

THE CHAIRMAN: At the beginning of your submission you say the Board should really have economic consequences in mind when it fixes freight rates, and for that purpose should be well equipped with a highly-trained technical staff -- of economists, I suppose.

MR FRAWLEY: Economists, accountants -- whatever they would need of that sort.

THE CHAIRMAN: What were necessary. After they had done all that and made a decision, you still say you should go from that to the Government in order to have that decision upset or varied, as the case may be, or rescinded. Then how would the Government be equipped to study the disposition made by the Board after its highly-trained technical staff has advised it, and so on? Would the Government then also have at its disposal a superior technical staff, more highly trained, to advise it

MR FRAWLEY: No, my lord. I am not suggesting that it be staff against staff. I would say, my lord, that the Government might say, "Now, here is a decision sincerely rendered, after advice tendered by this highly-trained technical staff, but it offends some principle of national policy which some part of Canada is proposing, and we disagree and we must interfere with it." To me that does not do any violence to the fact that the decision in the first instance was reached after there had been careful review by the economic advisers of the Transport Board. I would not think that there would be any necessary interference with the economic aspects of the matter at all, regarded as such, but that the national policy may come in somewhere -- some regional question may come in, something that can only be described in that

rather loose phrase "national policy", which the Government of Canada may say---

THE CHAIRMAN: Of course, bear in mind that economic considerations are not confined to Alberta and its wheat. They may exist all over the country.

MR FRAWLEY: That is right.

THE CHAIRMAN: For instance, the steel industry in some parts.

MR FRAWLEY: That is right.

THE CHAIRMAN: So, you see, what you would want the Board to have would be, it seems to me, a very numerous staff of people, and have all the economic conditions of Canada present every time freight rates are dealt with.

MR FRAWLEY: Well, my lord, just to digress for a moment, one can never go to the Interstate Commerce plant -- call it a plant -- in Washington without coming away with a feeling, well, here, the United States Government regards its transportation problem very, very seriously. There are economists and engineers and accountants almost ad infinitum: but they are all doing, I am sure, excellent work, and I have nothing but praise for them.

THE CHAIRMAN: Is there any appeal from the decisions of that Commission?

MR FRAWLEY: There is certainly an appeal, because many---

THE CHAIRMAN: I am not talking of points of law; but are not their decisions final?

MR FRAWLEY: I think I would have to say at once that as far as I know I think they are.

THE CHAIRMAN: Well, you see, there is all the difference in the world there -- you must remember that --

a very great difference.

MR FRAWLEY: Well, it certainly is a problem, my lord, there is no question about that, and perhaps it comes down to the question of appointment.

THE CHAIRMAN: I am trying to make sure that the consequences of what you advance are well considered.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Just to find out exactly what you are advocating as a final result.

MR FRAWLEY: I think, my lord, with respect, if we treat each subject separately, one does react on the other; but if we first say, now, must the Board have better and better equipped and more technical advice at its service, if we think yes, to do the kind of work we are asking them to do, to get away from the negative approach, which, with respect, is the burden of my submission, that they must have that, then it seems to me, my lord---

THE CHAIRMAN: Then they must have that, they must have a staff that is capable of dealing with the economic questions which affect all parts of Canada, not only wheat and livestock but everything else.

MR FRAWLEY: To the extent that that is necessary, sir, yes; and then after that I say that it does no violence to that, in my respectful submission, that over and above that the one policy-making body in Canada, the Governor-General in Council, should sit to agree or disagree with what that Board has done.

THE CHAIRMAN: Set it all aside?

MR FRAWLEY: Disagree with it and if necessary set it aside, or refer it back, sir -- because it may only come to that. I go along with the proposal made by Manitoba, that that is a weakness in section 52, that it should

be the power to remit back with directions.

Now, I say there is a need for the Board to be in a position to assess the economic effects of its decisions, and the lack of that has emphasized its negative approach. An example of that is the problem of the effect of horizontal percentage increases. I only deal with them in passing just as an example. By its very nature this matter can only receive effective consideration at the very time of the authorization of a rate increase, as the United States experience indicates. However, the Board has not been in a position to undertake the necessary studies of traffic upon which to formulate a scheme of exceptions to percentage increases. See observations of Commissioner MacPherson in 16% Case at p. 17.

I have noted Mr. Commissioner MacPherson's---

THE CHAIRMAN: Have you not argued every time you have had an opportunity before the Board that increases should not be horizontal?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: You say the Board are not equipped to decide whether they ought to be or not.

MR FRAWLEY: That seems to be the situation, sir.

I will read what Mr. Commissioner MacPherson says, and this is the most recent pronouncement, at the end of February 1950:

"I concur in the judgment of the Assistant Chief Commissioner although I would prefer to see some relief given by way of maximum increases on basic materials where the markets are long distances from the source of supply. I realize, however, that the Board cannot deal with the overall revenue requirements and limit the increase in certain cases. To do so would entail a much more complete study of indi-

vidual types of traffic than the Board is able to do at the present time. I also realize that the same revenue requirements would necessitate placing a higher burden on other traffic if maximums were to be prescribed."

Now, I do not want to be unfair to the Board, but I must adhere to the submission I am making, that the time for a horizontal percentage increase to be considered and applied or rejected is at the time of the increase.

My friends will tell me that at the moment the Board has been asked under the general terms of P.C. 1487 to conduct a general freight rate inquiry. There is nothing in that P.C. 1487 with regard to horizontal percentage increases, but we do have the Governor in Council.

THE CHAIRMAN: Well, you have us here. We are told to suggest amendments and direct the Board as to what they should do in these general freight rate revisions.

MR FRAWLEY: Yes, my lord, but---

THE CHAIRMAN: You have been arguing before us from the very beginning that horizontal increases are wrong.

MR FRAWLEY: Oh, yes.

THE CHAIRMAN: You say we should do something about it.

MR FRAWLEY: No, that is not my point, my lord. What I say is that on this question of horizontal percentage increases, when I make the point that the Board itself has said that they do not have the ability or the opportunity -- the words are

" . . . would entail a much more complete study of individual types of traffic than the Board is able to do at the present time."

What I am saying, my lord, is that I will be told, "Well, the Board is going to do all that. The Board is going to do that under P.C. 1487, and then you will have this question of the horizontal percentage increase and the advisability of exceptions and so on all dealt with at that time." Now, that may be, my lord, but my point is that that is not good enough. We have had a serious---

THE CHAIRMAN: What do you want, then?

MR FRAWLEY: I say that if they had a staff that could furnish the Board with the information which they could use and apply contemporaneously with the general increase -- that is my point. Apparently they are not able to deal intelligently or sufficiently and adequately with the matter of horizontal percentage increases at the time, at least on the three last occasions they have made general increases. My point merely is, my lord, that they should have, that there should be a staff there from day to day. It should not be a matter that just goes to a general rate inquiry. We suffer from these increases beginning in April 1948 and still not finished, and all this time we are waiting for P.C. 1487 to bring in some recommendation.

THE CHAIRMAN: I presume you have amendments, then, have you?

MR FRAWLEY: Oh, I have quite a few amendments, sir.

THE CHAIRMAN: I mean, on that point?

MR FRAWLEY: No, no. As far as horizontal percentage increases are concerned, on that point we support what---

THE CHAIRMAN: Let us get back to our starting point. We are instructed in this Order in Council to

"Review the Railway Act with respect to such matters

as guidance to the Board in general freight rate revisions, competitive rates, international rates, etc., and recommend such amendments therein" -- in the Railway Act -- "as may appear to them to be advisable."

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Now, you say that there is something lacking in the way in which the Board today approaches general revision examinations, do you?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: And what do you recommend they ought to be directed to do?

MR FRAWLEY: I recommend that this Commission should recommend a change in the Railway Act dealing with the matter of horizontal percentage increases.

THE CHAIRMAN: I am asking you whether you have an amendment.

MR FRAWLEY: I am supporting Mr. Smith's amendment.

THE CHAIRMAN: Mr. Smith has one?

MR FRAWLEY: Yes, my lord; but at the moment I was simply dealing with it as an illustration of the lack of staff. I am not dealing now with the main matter of horizontal percentage increases pro and con; that is being dealt with substantively and separately, and I am going along with Nova Scotia on their amendment. I am only using it as an illustration of the need for more and better staff there with the Board from day to day.

THE CHAIRMAN: We will take a few minutes now.

(Recess)

THE CHAIRMAN: Mr. Frawley, where you have

amendments that are ultimately to be discussed, and you come to the subject here under its general consideration, I think it would be a good thing if you simply deferred your discussion until your amendment is reached.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: You see the point -- so that we will not be discussing the same subject twice. It will save time.

MR FRAWLEY: My method has been that when I come to the point of the discussion my amendment is there, and I am discussing it once and for all just there, and I have reproduced it in the text of my argument each time.

THE CHAIRMAN: Well, that will achieve the same purpose.

MR FRAWLEY: Yes, my lord.

Going on at the bottom of page B-4, to finish this section of the national policy argument:

The Board has a serious responsibility to assess the effects of its general decisions. For once such decisions are in effect the Board's present procedure is to await complaints from individuals who can prove that they have been directly and personally harmed. Obviously, the possibility of redressing an individual complaint lies in discovering a general solution. In other words, unless such a general solution is available, the individual shipper is presented with a *fait accompli*.

Now, my lord, I pass to something which I regard as of particular importance. I call it the crisis regarding competitive rates, dealing with it now under the heading of national policy, national transportation policy, although I am dealing later, of course, with competitive rates, but that is, I think, a matter of some concern, and I am putting it in the general policy part of my argument:

Crisis regarding Competitive Rates

Even with an amended Act and a positive administration which we hope will result from this Commission's deliberations, it is possible that the burden of railway transport cost will not be equitably shared by the various regions of Canada. Indeed, recent evidence from both railways makes it appear certain that any further increases in freight rates will not be shared equitably. At p. 20219 of Vol. 110 I called Mr. Fairweather attention to what Mr. Evans had said to the Transport Board in the 16% Case and to Statement C in Transport Board Exhibit 49/211. See Transport Board Transcript Vol. 847, p. 6182.

See also Mr. Fairweather's answer to me at p. 20224 of Vol. 110, which was - the further increases will likely go on non-competitive traffic.

THE CHAIRMAN: You have the word "likely" there?

MR FRAWLEY: Yes, my lord. Mr. Fairweather's answer is:

"Well, I would imagine the greater proportion of it would likely go on to the non-competitive traffic."

This means but one thing. Western Canada, a non-competitive area, will henceforth be called upon to pay higher freight rates - higher freight rates to cover not only increased costs of wages and materials used in Western Canada but higher freight rates to pay increased wages and increased material costs in Eastern Canada.

This is the core of the transportation problem to-day.

If and when a situation arises whereby because of increased costs the railways are compelled to seek an increase in freight rates - an increase which they are unable to put on competitive rates - then a major crisis in trans-

portation policy is at hand.

There are two prime factors in this crisis:

- (1) The unequal impact of competition on the different regions served by the transcontinental railways and, therefore, the unequal impact of an increase in rates that is applied only to non-competitive traffic.
- (2) The unequal impact of competition on different traffic movements. Competition is less severe on long-haul traffic and on bulky raw materials which the railways are best equipped to handle. It would be these traffic movements and these commodities that would bear the increase.

I emphasize the point that Alberta, along with the rest of Western Canada, is vulnerable to both the consequences I have just mentioned.

If increased costs are imposed upon the railways which are translated into freight rate increases which can be levied only on the non-competitive traffic - then I say that it would be utterly indefensible to permit the railways to extract such an increase from the non-competitive traffic and the non-competitive areas.

When we reach the point that the competitive rates cannot shoulder their share of a freight rate increase - then the non-competitive traffic must be protected from the consequences. That protection can only come from the Federal Treasury in the form of a subsidy to the Railways.

I call attention to the fact that whatever assistance the Federal Government or Parliament may see fit to extend to the railways to enable them to bear higher costs is in effect a subsidy to railroad transportation in Central Canada. However incongruous it may appear that

Ontario and Quebec should receive transportation subsidies - yet that is indeed the net result. That Western Canada should be expected to bear even its own share of further costs in such circumstances is unthinkable. It is true that traffic may still be found in Western Canada that can bear the increase - because it has no means of avoiding it - long after the practical limit of increases has been reached in Eastern Canada. But to continue applying increases to Western Canada would widen the disparities between the rates paid in the East and in the West. Were the Federal Government to limit its assistance to making up what Eastern traffic could not be made to yield - that would amount to augmenting a tremendous advantage in an area of Canada already greatly favoured by natural and other advantages. If an increase cannot be applied equally to competitive and non-competitive rates alike, then it must not be extracted from non-competitive traffic.

COMMISSIONER INNIS: Have you any estimate of what that would amount to?

MR FRAWLEY: I do not know, sir. We are told that the high-class traffic now is being eroded in Eastern Canada. We are told -- and this is a surmise, but it is a surmise which certainly causes great alarm to me -- that they are now at the end of the way in so far as further increases on freight rates are concerned. What it would cost, sir, is just one of those things---

COMMISSIONER INNIS: You do not go along with the \$40 million and the \$56 million of the other two provinces?

MR FRAWLEY: No, I do not go along with that, sir.

THE CHAIRMAN: Do you think those figures are too high?

MR FRAWLEY: I have not applied my mind to that

sort of subsidy.

THE CHAIRMAN: You are neutral about that?

MR FRAWLEY: I just do not support that kind of subsidy, sir. I am not asking---

THE CHAIRMAN: What kind do you support?

MR FRAWLEY: This subsidy. I do not regard it, sir, as a subsidy; I regard this as---

THE CHAIRMAN: You call it a subsidy.

MR FRAWLEY: Yes, I do. It is really a subsidy, sir. Any payment out of the Federal Treasury---

THE CHAIRMAN: You say it is in effect a subsidy.

MR FRAWLEY: Yes, my lord. I mean, I do not seek to avoid calling it a subsidy. I will call it a subsidy. But it is assistance out of the Federal Treasury to the Canadian Pacific Railway, we will say, or the Canadian National Railway. Why? Because they are forced to continue to do an indefensible and wrong thing, namely, keep paying successive increases over which they have no control. Let us say, for instance, that out of the present pending wage negotiations there comes a large increase in freight rates. Now, they say that that cannot be visited -- perhaps I should say, I am saying that there is great likelihood that that increase could not be visited upon the competitive traffic. If that is the situation -- and in my respectful submission it would be the duty of the Commission to make close inquiry into that -- and if it could not be borne by the competitive areas of Eastern Canada, then they should not be allowed to do what they will do or would otherwise do, take it from the non-competitive areas. Now, I say that is the crisis that has been reached.

THE CHAIRMAN: Would you say that Parliament should itself both set the amount of these increases

and hand it over to the railways?

MR FRAWLEY: Parliament should say to the railways, "You have reached an impossible and untenable position. We cannot permit you now, because of something over which you have no control" -- I will go that far, and I say that is the ground on which the railways would have to put it. The railways would go to Parliament and say, "We have reached the end of our road, because of conditions over which we have no control. There is now such an effective competitive situation in Central Canada that those rates will not now take further increases, and we ask you to assist us in making up what we cannot get out of Eastern Canada."

Then of course I go further, and say that they must not be allowed to only make up what they could not get in Eastern Canada out of the Federal Treasury, and then continue to increase the non-competitive traffic in Western Canada. So I say, when that situation is reached -- granted that it has been reached -- I mean if, as and when it is reached -- I will put it that way, sir -- then there must be a stop, and to me that, sir, is the crisis.

I do not think there is anything more important in the transportation problem in Canada today than the fact that, because of many, many things -- because of geography, because of the adequate canal system in Eastern Canada, because of the efficient highway system in Eastern Canada, because of many things -- the railways now are reaching an impossible situation, but I say that they must not be allowed to continue to seek out further increases out of the non-competitive area. I cannot put it any more graphically than that.

THE CHAIRMAN: You must, I think, having regard to the figures we have seen in the newspapers, the possible consequences of certain demands now being met with; you must have in mind that Parliament would be devoting very large sums of money indeed just for that one reason alone.

MR. FRAWLEY: That is right, my lord. I face that.

THE CHAIRMAN: Do you think then that you can say consistently with that, that you are still anxious that the Canadian Pacific Railway should remain a private enterprise?

MR. FRAWLEY: Well, I say this, when I come to that in my argument, I have to take a sort of middle-of-the-road position there.

THE CHAIRMAN: Well, you face these things?

MR. FRAWLEY: Quite, sir.

THE CHAIRMAN: I am wondering how long people would put up with having many many millions of dollars being paid out to subsidies here and subsidies there, if the railway is owned by other people.

MR. FRAWLEY: Quite so, I put the alternative. I put it in the form of a rhetorical question, with great respect. Can we contemplate the railways with these large demands that have come upon them through wages and material costs -- they have no control over increased material costs, sir, and it almost seems they have no control over wages either; but in any event here they are faced with these increased demands which must, to them, be translated into freight rate

increases. It is step number 2; it, I must say, cannot be done. Now, they have freight rate increases. Where is it to be realized? I say, with all the conviction of which I am capable, that it is an unthinkable thing that they should be allowed to do the only thing they say they can do. As Mr. Fairweather says, it will have to be put where it can be got. No, I say, that is the crisis in Canada today. Surely there is something wrong about that. Then they have reached a situation where the Parliament of Canada, as *parens patriae*, must come in and say: "This is a situation which the railways must not be permitted to do" and I say - -

THE CHAIRMAN: Parliament could only prevent it by voting large sums of money.

MR. FRAWLEY: It certainly comes to that.

THE CHAIRMAN: That is the only way.

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: And these sums would have to be really the difference between the net revenue of the railways today and the revenues the railways need, substantially?

MR. FRAWLEY: Well, it would have to be (without seeking to avoid that question, because that is what it may be); I put it another way and say: What amount of money can you not collect out of Central Canada? So many millions. There then are the so many millions you have to collect, and then I say they must go further and say: "We cannot permit the Treasury to pay for Eastern Canada and the shippers themselves pay in Western Canada." So you come to a third point. That is, and I must not run away from the number of millions that would

eventuate, but I say this seriously - -

THE CHAIRMAN: And you must not run away from all the consequences of that kind of policy running on year after year.

MR. FRAWLEY: That is right, sir, and I face the other too, my lord. I look at the other consequences, the other side of the medal: the non-competitive area which is destined to continue to be a non-competitive area, which year after year must continue to pay. Now, I say, my lord, that the Parliament of this country cannot permit that to be done, that is all. And I am saying this in all sympathy, I say that seriously, and in all sympathy with the railways: this competitive situation is something over which they have no control. They would like to get rid of it, but if that is true and if that is the stone wall to them so far as further revenue is concerned, then something must be done.

THE CHAIRMAN: Well, we will hear how the railways argue in response to all this.

MR. FRAWLEY: Yes, my lord. Now, then, I now proceed to the more particular matters with which my submission is concerned, and the first one is equalization.

PART III

EQUALIZATION

In the Alberta Brief entitled "Rate-making Principles and the Rate Structure" it was pointed out that there were in effect at the present time:

- (1) Different scales of standard class rates in different regions of the country.

- (2) Different scales of distributing rates -- in the East called "Town Tariffs" and in the West "Distributing Rates".
- (3) Different commodity mileage scales on the same commodity in different regions.
- (4) Different levels of non-competitive commodity rates.

Transcript references:

Text of Brief Vol. 58 pp. 11109 to 11173

Evidence-in-chief Vol. 58 pp. 11178 to 11304

Vol. 59 pp. 11311 to 11398

Cross-examination Vol. 59 pp. 11398 to 11481

Vol. 60 pp. 11482 to 11631

These differences -- these anomalies in the rate structure -- arose out of a number of conditions:

- (1) Competitive conditions.
- (2) Traffic conditions existing in the early period of settlement in the West.
- (3) Differences in regional costs or densities of traffic.
- (4) Other purely local conditions.

Alberta submits that the continued existence of these differences cannot be justified by present-day conditions; that on balance they are a greater burden upon Western Canada and should be removed.

I will elaborate upon each of these matters, point by point:

- (1) Competitive conditions (as being one of the conditions out of which arose the differences which I have enumerated) cited in defence of regional differences are either obsolete, greatly altered, or met today by means of specific competitive rates.
- (2) Traffic conditions, existing in the early period of settlement in the West, applying in the early years of railway operation in the West are not any indication of what the level of rates should be today.
- (3) Differences in regional costs and traffic densities ignore regional revenues and ignore the position and function of the region in relation to the system as a whole.

In a single transportation system serving many different regions, the continuance of rate levels differing with regional costs of operation or regional traffic densities works hardship on the outlying parts of the system. These outlying areas act as feeders for the main lines and often have no local purpose or function other than to connect the area with the rest of the system. Such a method of rate making compounds advantages at the nucleus of the system and similarly compounds disadvantages at the periphery.

- (4) Other purely local conditions: in most cases the differences traceable to local conditions

are pure historic survivals and remain largely because of the lack of effective machinery for their removal.

THE RAILWAY ACT AND THE TRANSPORT BOARD
IN THE MATTER OF EQUALIZATION

In the Alberta case it was pointed out that, while there is nothing in the Railway Act to prevent the Board from putting into effect equalization of whatever type is desired, it is also true that there is no specific provision in the Act making equalization mandatory upon the Board.

THE CHAIRMAN: Does that mean, no matter how far apart the origin and destination may be?

MR. FRAWLEY: Yes, my lord, that means traffic moving from the same origin to the same destination. I mean, Montreal to Ottawa, Montreal to Ottawa.

THE CHAIRMAN: Montreal to Vancouver?

MR. FRAWLEY: Montreal to Vancouver, Montreal to Vancouver.

Section 314 ss. 1 comes closest to providing for equalization. That subsection requires that tolls "shall be charged equally" subject to specified conditions. But this prescription applies to "traffic passing over the same line or route". There seems to have been general agreement between Alberta and the Canadian Pacific that this phrase has been interpreted to mean traffic moving from the same origin to the same destination. (See the Jefferson, Vol. 80, p. 15938 - 39). If that be/correct interpretation, then Section 314 ss. 1 can be construed only as a provision prohibiting one type of personal discrimination -- that is to say, requiring that on identical

movements the same rates must be charged to all shippers. No reference has been found in any of the Board's Judgments which would place any broader meaning on this phrase. Equalization has never been laid down by the Board as the foundation for the rate structure -- the foundation from which departures might be made under proper circumstances. All of which supports the interpretation of Section 314 ss. 1 as merely a prohibition of one type of personal discrimination. We therefore recommend that Subsection 1 of Section 314 be repealed and the following be substituted therefor --

314 REVISED:

- (1) All tolls shall always in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route from the same origin to the same destination, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise.

Vol. 108
p.20006

In this subsection we have deleted the words "under substantially similar circumstances and conditions" and after the words "same line or route" we have added -- "from the same origin to the same destination".

We have deleted the phrase "under substantially similar circumstances and conditions" as unnecessary under the explicitly restricted meaning henceforth to

Mr. Frawley

be attached to this subsection.

THE CHAIRMAN: When you say "explicitly restricted meaning", you mean by that, since the traffic now is meant to be from point to point?

MR. FRAWLEY: Yes, from the same origin to the same destination.

THE CHAIRMAN: When you say "origin" you mean the point of shipment?

MR. FRAWLEY: Yes, my lord, the point of shipment to destination.

THE CHAIRMAN: To the point of destination?

(Page 21⁸40 follows)

The absence of any mandatory section in the Railway Act regarding equalization has had unsatisfactory consequences. It has made the achievement of equalization a long protracted struggle, permitting regional differences to remain for no better reason than that those differences formed part of the established order. The railways have never been called upon by the Board to justify such differences ab initio; the shipper complainant has been forced to prove "unjust discrimination." The removal of inequalities and anomalies has been made to depend on the ability of the complainant to prove "unjust discrimination." To be required to show unjust discrimination has proven entirely insufficient to remove differences in class and commodity rate scales, --

THE CHAIRMAN: Do you not think that unjust discrimination might very well be asserted by somebody who is not at these particular points of departure and arrival? Suppose the point of destination is a certain market. According to you from region A to that market the tolls would have to be the same because the two points of origin and arrival are the same.

MR. FRAWLEY: Yes.

THE CHAIRMAN: What about the people who are in between, who live at other points? Those are the ones who say, "You are discriminating against us; you are giving the potato growers in A a better rate to get to that competitive market than we get at this other point, B."

MR. FRAWLEY: This subsection --

THE CHAIRMAN: Is that the kind of discrimination you really get today? You just say it means point to point. Are there any discriminations today point to

point? In your amendment you say:

"All tolls shall always in respect of
all traffic of the same description" --

I suppose you mean the same commodities?

MR. FRAWLEY: Yes.

THE CHAIRMAN: " -- and carried in or
upon the like kind of cars or conveyances,
passing over the same line or route from the
same origin" --

You say that means point of shipment.

" -- to the same destination" --

You say that means point of arrival.

" -- be charged equally to all persons
and at the same rate, whether by weight,
mileage or otherwise."

Does that not go without saying? Suppose it is
potatoes, as we said, and the point of shipment is a
town and the market point is another town. Would not
all those who shipped potatoes from the point of shipment
to the point of destination pay the same freight?

MR. FRAWLEY: Yes.

THE CHAIRMAN: They do today.

MR. FRAWLEY: Yes.

THE CHAIRMAN: That is all that you are bringing
about here. The discrimination complained of is on
the part of those who do not live at point A; they live
somewhere else.

MR. FRAWLEY: This section would not apply
because this man would not be shipping --

THE CHAIRMAN: You would repeal the present
section. You say:

"We therefore recommend that subsection 1
of section 314 be repealed" --

MR. FRAWLEY: Yes.

THE CHAIRMAN: Then in your proposed section it says that all freight from one point to another point of the same description shall pay the same toll. Well, of course it does now. Isn't that right?

MR. EVANS: Yes, it is the same tariff.

MR. FRAWLEY: I want to be sure I understand what your lordship's objection is.

THE CHAIRMAN: I think you had better reconsider your amendment.

MR. FRAWLEY: Will your lordship excuse me for a moment? You see, my lord, perhaps I should say this section is just the first step in the scheme of equalization which I intend to propose, and I have further amendments.

THE CHAIRMAN: Mind you, you sacrifice the present section; you repeal it.

MR. FRAWLEY: And I put this in because I say this is how the section should now read. In my submission it has been interpreted as being from the same origin to the same destination. That is all that the section means as it stands now, and I am making it more clear.

THE CHAIRMAN: There is the matter of the words "similar circumstances and conditions". To begin with you take them out.

MR. FRAWLEY: I say that is unnecessary because now it is necessarily under the same circumstances and conditions.

THE CHAIRMAN: I think what you are doing is you are putting in a totally different section which probably is unnecessary because it just says that all potatoes carried from A to B shall be carried for the

same price to all shippers. That is all you are saying there. Is it necessary to say that? Is that not the fact? That is to say, the railways cannot discriminate between shippers shipping the same commodity from the same point to the same point.

MR. FRAWLEY: That is right.

THE CHAIRMAN: Whether they are rich or poor.

MR. FRAWLEY: They could not, but I say this prohibits it. That is why I say it prohibits personal discrimination.

THE CHAIRMAN: Is that not taken for granted in the freight structure? As I say, the railways cannot say, "We will have two rates for potatoes from A to B." I am not talking about agreed charges now. That might complicate the situation. Mind you, in putting forward this amendment you are throwing out what section 314 now contains, that is to say, that:

"All tolls shall always under substantial similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise."

It provides for different points of shipment to different points of destination. The rate must be the same. You would bring that down to apply only to those who ship from the same point to the same point. I think you had better consider it.

MR. FRAWLEY: May I just say that the interpretation which your lordship has put on it is not, in my understanding, what has been the interpretation.

In other words, it has now been interpreted to mean just as I have left it now. In other words, it has been interpreted to mean that the rate from the same origin to the same destination must be the same, and I have just said that in so many words.

THE CHAIRMAN: That is what I say. Why do you need a new section to say that? Nobody disputes that. You see, the present section goes much further than that. It says that not only must the rate be the same from A to B but it must also be the same to all persons on that same line.

MR. FRAWLEY: This is an extravagant example. The section does not say if the rate from Ottawa to Winnipeg is so much that the rate from Sudbury to Winnipeg must be the same because it is on the same line. The section does not say that.

THE CHAIRMAN: I suggest you should think it over.

MR. FRAWLEY: Very well, my lord. Before leaving the matter, and at this place in my argument, perhaps I might call attention to section 316.

THE CHAIRMAN: My colleague, Professor Innis, raises a question that has been raised before. Has the present Act been interpreted to mean running both ways on the same line?

MR. SINCLAIR: No.

THE CHAIRMAN: Mr. Sinclair says no. I think that is right; we were told no.

MR. SINCLAIR: Consumers Glass and C.F.A. is the case.

THE CHAIRMAN: I think perhaps we should look at that.

MR. SINCLAIR: I have not the citation here.

MR. FRAWLEY: On the point raised by Professor Innis, I want to call your attention to the Dominion Sugar Company case, 1928, 17 J.O.R. & R., 561.

THE CHAIRMAN: 1928?

MR. FRAWLEY: 1928, 17 J.O.R. & R., 561.

At page 564 it says:

"Even with regard to rates on the same line of railway, a difference in rates on different parts of the line does not necessarily constitute unjust discrimination," --

THE CHAIRMAN: No, unjust discrimination must be shown.

MR. FRAWLEY: " -- and to carry the illustration further, there may be, without unjust discrimination, over the same portion of the ^{same} line, a difference in rates where the movements are in the opposite direction."

THE CHAIRMAN: That is the same case you have in mind?

MR. SINCLAIR: No, I think the Consumers Glass case was referred to in that case. Consumers Glass is the leading case on the point. It makes it very clear..

COMMISSIONER INNIS: You make that much more precise in your revision.

MR. FRAWLEY: Yes, that is the purpose of it. I shall continue with my argument.

To be required to show unjust discrimination has proven entirely insufficient to remove differences in class and commodity rate scales, for this complaint -- that is the complaint of unjust discrimination -- is effective only when there is competition between shippers

in the same market. That is clear from many decisions of the Board. I would only call attention to the Spanish River case.

MR. COVERT: That is 28 C.R.C., page 100.

THE CHAIRMAN: What is the name of the case?

MR. COVERT: Spanish River v C.P.R., 28 C.R.C., page 100.

MR. FRAWLEY: I want to quote from what they say at page 111.

"In passing upon such matters, the Board has held it should take into consideration whether there is actual competition in the same markets, between the companies concerned, and in respect of the product concerned; and where there was no such competition it has held that difference in rate did not constitute an unjust discrimination or undue preference."

The citation there is Michigan Sugar Company versus C. W. & L. E. Railway Company, 11 C.R.C. 353, at page 362, 363.

THE CHAIRMAN: That is the case that our Board refers to?

MR. FRAWLEY: That is the case our Board refers to, the earlier case of the Michigan Sugar Company. Then they go on to say:

"One criterion of unjust discrimination is whether the district alleged to be discriminated in favour of has profited at the expense of the locality against which it is alleged the discrimination has taken place." They cite there three cases which the Board will find at that page in the Spanish River case.

At the same time the concept of just and reasonable rates has been rendered even less effective for this purpose - that is, removing the difference in cost and commodity rate scales - by making the standard of reasonableness *per se* the rates paid by other shippers in the immediate vicinity. And I refer there to what Mr. Evans said at volume 87, page 16850-1. Comparisons between specific rates or rate scales in the Ontario-Quebec and the Prairie territories respectively have been given no weight. And I refer to *Plunkett and Savage v Express Traffic Association*, 1923, 28 C.R.C. 402, 405. That there should be differing bases of rates in different regions has been taken for granted, and this has been deemed to be enough to vitiate such rate comparisons. And I refer to the evidence of Mr. Jefferson, Vol. 80, p. 15915 and 15940. Such a procedure has successfully ruled out *a priori* any broad criterion for reasonable rates - the regions have been considered separate compartments between which comparisons are not valid.

The Board has two separate criteria by which to judge a rate complaint:

- (1) Whether the rates are just and reasonable.
- (2) Whether there is any unjust discrimination or undue preference involved.

I cannot put it too strongly that these criteria are separate and distinct from one another. Our complaint is that the Board has constantly confused these two, and for all practical purposes has made unjust discrimination the sole criterion, even to the extent of equating reasonableness with the absence of unjust discrimination.

THE CHAIRMAN: Pardon me, but ⁱⁿ those considerations ^{that} apply to what you refer to as the general application for a freight rate increase or decrease, has the Board not been compelled there by law to follow the rule of "just and

reasonable", not in a way to satisfy everybody but I mean they have ^{applied the} rule in that way?

MR. FRAWLEY: Our submission is that the question of "just and reasonable" has not been properly examined, ^{and} that it has been merged with the concept of unjust discrimination. What I intended to refer the Commission to was to what was said by Commissioner ^{McKeown} in the general rate investigation, 17 J.O.R.&R. page 131, at page 134.

THE CHAIRMAN: Where do you refer to that?

MR. FRAWLEY: At this point I should like to give the Commission that reference.

THE CHAIRMAN: Oh yes. Would you say that again, please?

MR. FRAWLEY: It is the general rate investigation, 17 J.O.R.&R. 131 at page 134. There the Chief Commissioner says:

"It must be said that it is difficult to find instances in the existing rate schedules wherein individual rates compared with each other can be said to be tainted with undue preference or unjust discrimination."

THE CHAIRMAN: Must we not take it for granted-- or am I wrong--that you have a general rate structure which places a ceiling over all rates? Must it not be assumed that that rate structure is just and reasonable to begin with; and that underneath it, so far, the railways are left free to make concessions here and there, provided that in doing so they do not discriminate against some locality or some person. Is that not the present situation?

MR. FRAWLEY: It was argued to the Commission that because of the requirements in section 330 which says:

"Every standard freight tariff shall be filed with the Board, and shall be subject to the approval of the Board."

It is there that what your lordship has referred to as the ceiling rates are filed for approval, under section 330 which says:

"Every standard freight tariff shall be filed with the Board, and shall be subject to the approval of the Board."

It was argued to the Board that because the standard maximum mileage rate - the ceiling as your lordship has called it - is approved, that it must be, sort of mathematically or by statute, a just and reasonable rate, because of this over-all requirement that the Board must --

THE CHAIRMAN: Fix and maintain.

MR. FRAWLEY: Yes, fix and maintain a rate which must^{be} always just and reasonable. So it is argued that merely because there is approval under section 321, then all the rates approved under 330 are just and reasonable; and those are the ceiling rates, the very maximum rates. Then as your lordship has said, they have the right to establish rates under that; and every rate established under that ceiling must a fortiori be just and reasonable.

THE CHAIRMAN: No, because it may discriminate.

MR. FRAWLEY: Oh, yes, subject to discrimination. That renders this whole concept of "just and reasonable" to be not important at all.

THE CHAIRMAN: Yes. But we must admit, I think, that the Act is being obeyed and^{that} this ceiling, to call it that, is a just and reasonable one.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Then no rate fixed lower than that can be unjust and unreasonable?

MR. FRAWLEY: That is right.

THE CHAIRMAN: But because it is low, it may discriminate unjustly against some other locality which is being

made to pay the ceiling rate.

MR. FRAWLEY: Yes, my lord. I follow that.

THE CHAIRMAN: Insofar as that locality is concerned, the rate would not be unjust and unreasonable in itself, but it becomes so because some other locality is being favoured at its expense.

MR. FRAWLEY: It becomes a matter of discrimination and undue preference.

THE CHAIRMAN: That locality says, "Give us the same rate that you have given to the other localities".

MR. FRAWLEY: Yes. But, my lord, to me what that does is to put the whole concept of just and reasonable rates as something not very important.

THE CHAIRMAN: Tell me what is your remedy for this. What do you want us to do. Have you an amendment?

MR. FRAWLEY: We have a specific series of amendments.

THE CHAIRMAN: We had better wait until we get to them, then.

MR. FRAWLEY: Very well, my lord. Then I say:

The result is that regional disparities in rates have persisted as a source of dissatisfaction. It is perhaps significant that, although the power to remove these disparities is admitted by all parties to lie with the Board and although such power has been continuously with the Board since its formation, the only step that has brought equalization within sight of realization has been the recent voluntary proposal on the part of the Canadian Pacific Railway.

THE CHAIRMAN: I did not mean to exclude, by what I said just now, any contention that you may wish to complete later on, I suppose, about any particular system of rates being unjust and unreasonable such as, for instance, horizontal rates and the long-haul rate and so on.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: You still are free to argue that that system in itself does produce unjust and unreasonable rates.

MR. FRAWLEY: Yes. I follow what your lordship says. I continue:

There seems to be little fear now that equalization would be impracticable or run counter to principles of rate-making acceptable to the Board. This would indicate clearly that the Board's practice of waiting for complaints to be lodged before acting has operated to the disadvantage of shippers and consignees in regions that have so often unsuccessfully complained about the rate disparities which are now to be removed by the gracious acquiescence of the Canadian Pacific. I call to the Commission's notice that such a step is eventually being achieved not as a direct result of the statutory obligation on the Board to prescribe and maintain just and reasonable rates, but because the railways have finally considered it expedient to give up the positions so tenaciously defended by them in a long series of cases, including the General Rate Investigation of 1925-27 and as recently as the Mountain Differential Case. All of this points to the essential weakness of the present Act in the matter of equalization. What value remains in all the reasons and arguments so often adduced by the railways in previous cases --

THE CHAIRMAN: You refer there to recent proposals?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Will you give us some reference as to where we will find out what was proposed?

MR. FRAWLEY: The matter was brought up and Mr. Evans made a statement that it was not feasible or practical to submit the scheme to the Board at the time, or to the Commission at the time. Likewise it was brought up in the Transport Board, and we of the provinces requested that the Canadian Pacific

submit the proposal to the Transport Board; but there again Mr. Evans gave reasons why, in his view, it was not a practical thing to submit it at that time. And there the matter remains.

THE CHAIRMAN: Is it practical at this time to submit any proposal?

MR. EVANS: No, sir. There is evidence here as to that. Mr. Jefferson gave evidence, and the statement I made was that until we had the results of the way bill analysis that the Board had under way, we could not produce it.

THE CHAIRMAN: I remember that. We will adjourn now.

(The Commission adjourned at 1.00 p.m. to meet again at 2.45 p.m.)

(page 21860 follows)

OTTAWA, ONTARIO
FRIDAY, MAY 5, 1950.

A F T E R N O O N S E S S I O N

THE CHAIRMAN: Mr. Frawley?

MR. FRAWLEY: I was at the middle of page C-8, my lord.

What value remains in all the reasons and arguments so often adduced by the railways in previous cases in defence of existing regional disparities -- differences in regional costs, regional traffic densities, the inability of the shipper to prove detriment, the absence of unjust discrimination, and so on? Now it would appear that they can be quickly and conveniently forgotten.

The conclusion can only be that the Board's practice has placed an impossible onus on the individual shipper seeking reasonable rates. He has been asked to show cause why regional differences should not be allowed to exist. No more effective device for the defence of the status quo could be imagined. Complaints regarding the reasonableness of rates have been whittled down to complaints regarding unjust discrimination. What the individual shipper or the region itself was unable to obtain as a right is to come as a gift from the railways. We hope not wholly on the railways' terms!

But Alberta is not satisfied to leave the matter there. We ask the Commission to go much further on the way to a just equalization -- much further than the railways have offered to go.

Now, I go, my lord, to our positive proposal by which we hope to bring about equalization.

RECOMMENDATIONS re EQUALIZATION:

At page 11112, Vol. 58 of the Transcript, our recommendations regarding equalization are set forth:-

- (1) Class rates within all regions should be uniform.
- (2) General commodity mileage scales should be uniform in all regions for each commodity involved.

THE CHAIRMAN: Pardon me, when you use that expression "uniform in all regions" do you mean in the whole country?

MR. FRAWLEY: Well, regions. There are what they call regions, rate regions, rate territories.

THE CHAIRMAN: Yes, I know.

MR. FRAWLEY: That is what I mean.

THE CHAIRMAN: Within each one of these subdivisions of the country there should be equality?

MR. FRAWLEY: Yes, in all regions, they should be the same.

COMMISSIONER INNIS: In each or in all?

MR. FRAWLEY: No, in all.

THE CHAIRMAN: In the whole country?

MR. FRAWLEY: Yes, my lord. Let me be quite clear. Something has been drawn to my attention, that the rates between regions, between, for instance, Toronto and Edmonton where they go through the Fort William break, those are treated separately, those are different. But we say that apart from that the commodity mileage scale in Alberta for 100 miles is X cents, and it must be X cents for 100 miles in

Nova Scotia.

THE CHAIRMAN: But it would be less in one region than it is in another region?

MR. FRAWLEY: That is right, my lord.

THE CHAIRMAN: But between regions, that is --

MR. FRAWLEY: That is different between regions, and I deal with that separately.

THE CHAIRMAN: I think you told me some months ago that a case such as the first there, similar mileage, similar commodities, but two different regions, one is British Columbia and one Nova Scotia: that rates *prima facie* should be the same.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: But that if there was competition in one area and not the other, there might be deviation?

MR. FRAWLEY: Yes, my lord, that is our submission.

THE CHAIRMAN: You are not receding from that ground?

MR. FRAWLEY: Not at all, that is our position. Now, I did not read the third one:-

- (3) Specific non-competitive commodity rates should be uniform in all regions for like commodities.

Now dealing with the first one, Alberta proposes that the first of the above recommendations, that class rates within all regions should be uniform, we suggest that that be implemented by a change in Section 329 (1) as follows, and this would be our 329 (1) in lieu of the existing 329 (1). What I substitute for the present 329 reads as follows, my lord:-

329 REVISED:

- (1) The standard freight tariff shall specify the maximum mileage tolls to be charged for each class of the freight classification for all distances covered by the company's railway and such tolls shall be the same for the same distances and the same tolls shall be charged by all companies.

THE CHAIRMAN: This is to take the place of what?

MR. FRAWLEY: Of what is there now, 329 (1). Well, it is not market (1), it is the first sub-section of 329.

THE CHAIRMAN: Just a minute, what is the difference between the present sub-section and - -

MR. FRAWLEY: Well, my lord, there are a number of variations there. Reading from the present section 329:-

"The standard freight tariff or tariffs where the company is allowed by the Board more than one standard freight tariff - - "

THE CHAIRMAN: That is where it is pluralized?

MR. FRAWLEY: Yes:-

"...shall specify the maximum mileage tolls to be charged for each class of the freight classification for all distances covered by the company's railway."

Now, our amendment, we think, prescribes, as I say on the top of page C-10, one and the same scale of standard class rates for all railways under

the Board's jurisdiction. We think our amendment makes that perfectly clear now, that there must be one and the same scale for standard class rates for all railways under the Board's jurisdiction.

THE CHAIRMAN: Is that the case today?

MR. FRAWLEY: No, that is not the case now, so that we want that, and we think the language we have adopted will make that clear.

THE CHAIRMAN: One and the same scale of standard class rates for all railways. Do you say today there is a difference between standard class rates between - -

MR. FRAWLEY: Not railways, between regions there are differences today which we want to eliminate.

THE CHAIRMAN: I see. This amendment prescribes one and the same scale of standard class rates for all railways.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Under the Board's jurisdiction?

MR. FRAWLEY: Under the Board's jurisdiction.

THE CHAIRMAN: You mean all regions again?

MR. FRAWLEY: I mean in all regions and for all railways, but your lordships point may be that there is no difference now between the railways.

THE CHAIRMAN: No, no.

MR. FRAWLEY: That could be so.

THE CHAIRMAN: You sound that way.

MR. FRAWLEY: That is right, and there are no differences today, so that that thing perhaps does not have to be taken care of specially. What we are anxious to take care of specially is the fact that

today there is a class rate scale in the West and a different class rate scale in the East.

It must be recalled that under an accompanying recommendation Alberta asked that the dual system of class rates -- standard class rates and distributing class rates overlapping in the same area -- be abolished and that in place there be established a single scale of class rates at or near the level of the present distributing class rates.

THE CHAIRMAN: You think your proposal would bring about that result?

MR. FRAWLEY: Yes, my lord, that is the purpose of it. Then I give the reference to Volume 58, pp. 11130-33.

Now, our second and third recommendations for equalization -- and just to go back again, the second one was that general commodity mileage scales should be uniform in all regions for each commodity involved, and the third was that specific non-competitive commodity rates should be uniform in all regions for like commodities -- we say as to that that our second and third recommendations for equalization would be achieved by the repeal of Section 329 (3) of the Railway Act and by the substitution in its place of a new Section 329A, sub-section (1) and (2), which new legislation is to be found at the transcript page 20011 where they were put in some weeks ago. Now, the new section 329A will read: - - and your lordship will appreciate we are now passing from the standard class rates to the special freight tariffs, because those were the ones dealing with commodity rates.

SECTION 329A

- (1) The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff - -

THE CHAIRMAN: Does that mean all rates lower than the standard are special?

MR. FRAWLEY: Are special rates. Then there are special rates - -

THE CHAIRMAN: Commodity rates?

MR. FRAWLEY: Commodity rates, yes, those are the special rates.

THE CHAIRMAN: So long as they are below the ceiling they are special?

MR. FRAWLEY: They are special, my lord. One might say that, yes, that is quite right, my lord.

THE CHAIRMAN: All right then.

MR. FRAWLEY:

"SECTION 329A,

- (1) The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway."

Now, that is exactly as it reads up to the present, that is how it reads now and that is where we stop.

THE CHAIRMAN: Do you strike out the rest?

MR. FRAWLEY: Then we stop there and the rest

is struck out.

THE CHAIRMAN: Yes, will disappear.

MR. FRAWLEY: Yes, my lord. Well, as a matter of fact we strike out the whole of (3) and then we repeat it all, what follows after the semi-colon, "greater tolls shall not be charged " and so on.

THE CHAIRMAN: Do you think you are taking care of that - -

MR. FRAWLEY: Elsewhere, yes, my lord. Now, the second sub-section reads (and this, my lord, you will appreciate is a new subsection):-

(2) The tolls for the same description of traffic charged in the special freight tariffs shall be just and reasonable and shall be the same for the same distances, and such distances may be expressed in blocks or groups and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls; Provided that distinctions in such descriptions of traffic shall be based on the nature and use of the commodity or commodities and shall not be based upon local or regional differences in operating conditions nor upon competitive conditions.

THE CHAIRMAN: Is there anything of a similar nature now in the Act, the consideration of the use of a commodity?

MR. FRAWLEY: Well, that is where, sir - -

THE CHAIRMAN: Or is that a new element?

MR. FRAWLEY: No, it is new in this sense, that we are now allowing that there may be departures

from the uniform commodity rates for certain purposes, and that was made clear. Perhaps at this point I should put into the record the place in the Transcript where that was dealt with. That was dealt with at Volume 58, pp. 11139, where Mr. Darling expounded this proposition and that is where the matter of the proviso was discussed, because we appreciated the fact that there may be some reason for departures from an absolute uniformity of commodity rates.

THE CHAIRMAN: Would coal be one of those commodities?

MR. FRAWLEY: Well, almost any one would be, where there might be - -

THE CHAIRMAN: Coal brought all the way from Alberta to be used in Ontario, is that the kind of project you have in mind here? "Based on the use of a commodity"? I am wondering, can you give me some other information?

MR. FRAWLEY: Now, let us just see if we can.

THE CHAIRMAN: I understand you give examples on the next page.

MR. FRAWLEY: Yes, I go into the reasons, sir. That is what I was saying and probably this will clear it up.

These new subsections would require special freight tolls to be just and reasonable, and to be the same for "the same description of traffic". The intent of the proviso in the new subsection (2) (which is just what your lordship has been asking me about) is to forbid the recurrence of regional rate disparities based on any of the local operating conditions which have been used from time to time in the past to justify

regional disparities.

THE CHAIRMAN: Would you give me an instance of that? What the complaints were?

MR. FRAWLEY: Those matters, my lord, were dealt with on page C-1, where I spoke of the competitive conditions, the traffic conditions existing in the early period of settlement in the West: "Differences in regional costs or densities of traffic, and other purely local conditions".

Now we are seeking to get away from that sort of justification for departures. Our reasons for rejecting these factors, such as local costs of operation, density of traffic, as suitable determinants of local rate levels in a unified transportation system were given at pages 11117 to 11120, Volume 58.

THE CHAIRMAN: When you say this, you mean your reasons - -

MR. FRAWLEY: Yes, my lord, the reasons for rejecting those factors which have up to now persisted. We find these supported implicitly in the Canadian Pacific's own criticisms of the cost of service principle and its recent conversion to a stand favouring equalization of rates. By permitting -- as our proposal does -- distinctions in rates based on the nature and use of the commodity, all reasonable departures from equality will be provided for.

THE CHAIRMAN: You still have not given us an example of a distinction that might be based on the nature and use of some particular commodity.

MR. FRAWLEY: It is called to my attention, my lord, that as an example of that, there might be a

departure allowed for the movement of a partly manufactured commodity. There might be a departure there under this expression "nature and use of the commodity", but not, we say, because of such things as local costs of operation and density of traffic and so on.

COMMISSIONER INNIS: You are not thinking of market competition?

MR. FRAWLEY: No, not here, sir.

COMMISSIONER ANGUS: Did you have Newfoundland in mind when you drafted this?

MR. FRAWLEY: No, not specially, no.

COMMISSIONER ANGUS: But it applies?

MR. FRAWLEY: Well, it might, sir.

THE CHAIRMAN: Perhaps you could tell me this, does the present Act provide anywhere for this distinction based on the nature and use of commodities?

MR. FRAWLEY: Well, I cannot direct your lordship to any place in the Statute, but our position is that implicitly that is now provided for, and we are now making that clear. Yes, our main concern, sir - -

THE CHAIRMAN: For example, you say "partly manufactured articles". Well, if they are partly manufactured, there they are. The nature and use would be that it has to go to some other factory where it is to be completed.

MR. FRAWLEY: No, my lord, but there could be a different rate for a partly manufactured commodity moved into a factory to be completed, than the commodity itself, the finished commodity. That would be taken care of - -

THE CHAIRMAN: It would still be in the way of raw materials, you might say?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: For a finished product?

MR. FRAWLEY: May I put it this way. The extreme position would be to say that there must always be uniformity and no specific departure from it. Now, we are wanting to be reasonable about it and we agree that there must be in some instances departures from this rigid uniformity, rigid equalization; and that of course, as your lordship may remember, was quite fully developed and this is just a summary of the position which we took in the witness box.

COMMISSIONER ANGUS: Would your phrase cover export rates? Would it cover specially low rates for export?

MR. FRAWLEY: Yes, because they would come under a different description of traffic. I mean, it is differently described and that is taken care of.

THE CHAIRMAN: Pardon me a moment, you say in your amendment, I mean in this new sub-section (2), you say that tolls charged shall be just and reasonable and so on, provided that these distinctions in such descriptions of traffic shall be based, and so on. Is that a proper way of putting it? Do you mean if there are to be any distinctions at all, they would be based upon this one thing?

MR. FRAWLEY: They must be founded upon or have to do with the nature and use of the commodity.

THE CHAIRMAN: Do you mean there shall be no distinctions except such as may be based upon nature and use?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: That is what you mean?

MR. FRAWLEY: That is what the proviso says.

THE CHAIRMAN: Otherwise you are making your distinctions almost based on the nature - -

MR. FRAWLEY: Then we go on - -

(Page 21875 follows)

THE CHAIRMAN: Just a minute. You are giving us amendments, and we have to be sure. Can you change that in any way? You say that there shall be no distinctions in such rates excepting those that may be based on the nature and use.

MR. FRAWLEY: Well, it could have this meaning, and could be read this way: "Provided such distinctions as may be made shall be based."

THE CHAIRMAN: Then will you redraft it for us?

MR. FRAWLEY: Well, yes, my lord. I think that is perhaps what it means now.

THE CHAIRMAN: You say here, "Provided that distinctions in such descriptions of traffic shall be based on the nature and use."

MR. FRAWLEY: I see what you mean. In other words, there would appear to be now an imperative requirement...

THE CHAIRMAN: You wish to exclude all distinctions except those that can be justified by the nature and use of the commodity in a particular case.

MR. FRAWLEY: That is exactly so, my lord.

THE CHAIRMAN: You had better make sure that you are doing that.

MR. FRAWLEY: Yes; very well.

COMMISSIONER ANGUS: Mr. Frawley, is a distinction in the description based on destination for export really a distinction in description based on nature and use?

MR. FRAWLEY: Well, I suppose it is, yes. Wheat for export is used for flour, just as it is domestically.

COMMISSIONER ANGUS: I was wondering if your language would have the effect of prohibiting special rates for export.

MR. FRAWLEY: Well, it certainly must not, my lord; in my contention, it must not. If it needs to be changed...

THE CHAIRMAN: When you use the word "distinction" of course you mean distinction in rates, do you not?

COMMISSIONER ANGUS: Distinction in description.

THE CHAIRMAN: Yes, because you say description. When you say "distinctions in such descriptions", you mean the including of them within a certain rate class?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Descriptions of traffic.

MR. FRAWLEY: The intention, sir, is to ...

THE CHAIRMAN: Are you sure that "description" is a very happy word there?

MR. FRAWLEY: Well, it is the word that is used now, sir, in section 316, and that is our principle reason for taking it, sir. Even in section 314 you have "In respect of all traffic of the same description." The words "traffic" and "description" seem to have an affinity in these sections. The intent is, of course, to endeavour to get away from these things that up to now have presented equalization in the commodity rates.

THE CHAIRMAN: As long as you make the language clear.

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: It would be too bad to adopt language that would give rise to all sorts of disputes later on.

MR. FRAWLEY: Yes, I quite agree, sir. Of course, I say this in dealing with it - I am not saying it in an apologetic tone, sir, but perhaps there is something apologetic in it - these amendments are intended to convey to the Commissioners the things that we want in the main expressed in statutory language. I am sure that if they are acceptable at all they will be all very carefully reviewed by people skilled in the drafting of legislation, and, while

that does not excuse me for not offering the very best I can to the Commission, I quite agree, I do not contend that there could not be some refinement in the language which would ...

THE CHAIRMAN: My trouble is that I am not sure that I understand myself, you see, just how it would be applied.

MR. FRAWLEY: It is intended, as I say, to get away from the local or regional differences in operating conditions that have been the stumbling block to proper equalization. Now, going on ...

THE CHAIRMAN: Dealing with the case of distinctions in descriptions of traffic...

MR. FRAWLEY: Well, I will say this, my lord: I will try - I do not mean for the purpose of changing my section, although that might be done too - to put that in more simple language, perhaps, before I complete my....

THE CHAIRMAN: For instance, here is a commodity, let us say iron, and it is subject to a certain rate; if it is to be used for certain purposes it might be allowed to have a lesser rate; is that it?

MR. FRAWLEY: That would be a justification for a distinction in the description, and the traffic would be differently described, and then that would constitute a departure from the established commodity rate. That is right, sir.

COMMISSIONER ANGUS: I think we have an example, haven't we, about wood being used for fire wood and wood being used for ties for a railway?

THE CHAIRMAN: Yes, that would be a very good example.

MR. FRAWLEY: That would be a very good example.

Now, my lord, if I might pass to the bottom of page

The Canadian Pacific has challenged the feasibility of including specific commodity rates within the rate equalization programme, and this constitutes the principal difference between the Alberta and the Canadian Pacific equalization proposals.

Perhaps I should make that clear, my lord. The Canadian Pacific suggests some equalization, a degree of equalization, in the class rates. Now, what they suggest in connection with the class rates is not wholly acceptable to us, but there is at least an intention on the part of the Canadian Pacific to equalize the class rates. Now, with that we agree, and we go a little further, but when we come to the commodity rates, both the general commodity mileage scales and the specific non-competitive commodity rates, that is where there is a sharp distinction between what we propose and what the Canadian Pacific suggests.

The reasons urged by the Canadian Pacific are not of sufficient weight to exclude the specific commodity rates from a just plan of rate equalization. It would be agreed that the most important reason for the separate treatment of an individual movement of traffic is competition. But competition is entirely excluded from the scope of the equalization proposed either by the Canadian Pacific or by Alberta. The only remaining ground for differences in specific rates on the same commodity must arise, therefore, out of differences in what the traffic can or will bear.

Both plans of equalization allow ample latitude for the level of rates on all movements of any particular commodity to be set at the optimum point. The Canadian Pacific's position is that further latitude must be available to allow differences in rates between shippers of the same description of traffic. (See Part II Canadian Pacific Submission, p.75);

"As to point to point commodity rates

Because of the large number of these rates and the fact that they reflect not only local conditions but also reflect the needs of local industries, - that underlining is our own - it is not, in the opinion of Canadian Pacific, practicable to attempt to equalize these rates with the exception of those that are related to the commodity mileage scales . Mr. Jefferson's evidence at pp. 15916-17 is quite to the contrary. With regard to commodities which move to or from a large number of shipping points, Mr. Jefferson indicated that he would be unable to make any distinction between shippers.

THE CHAIRMAN: How could he?

MR. FRAWLEY: Well, that is right, sir.

THE CHAIRMAN: You think that the submission of the C.P.R., apart from Mr. Jefferson's explanation, means that very thing, that there will be discrimination between shippers?

MR. FRAWLEY: No, no. We agree in this instance with Mr. Jefferson, sir.

THE CHAIRMAN: I know, but you seem to be asserting that Mr. Jefferson is not in agreement with the general position advanced by the C.P.R. in its submission at page 75; is that what you say?

MR. FRAWLEY: Yes, my lord, because the Canadian Pacific---

THE CHAIRMAN: You say, Mr. Jefferson's evidence is quite to the contrary.

MR. FRAWLEY: Yes, to the contrary of what is said at the bottom of page C-12 in my submission, my lord.

THE CHAIRMAN: Now, what does that say?

"As to point to point commodity rates

Because of the large number of these rates and the fact that they reflect not only local conditions but also reflect the needs of local industries, it is

not, in the opinion of Canadian Pacific, practicable to attempt to equalize these rates with the exception of those that are related to the commodity mileage scales".

I don't know myself; perhaps I will to be told in due time. "to equalize these rates" - point to point commodity rates - does that mean equalize them as between different commodities or as between the same commodities?

MR. FRAWLEY: It is the same commodities, sir.

THE CHAIRMAN: That is what Mr. Jefferson says.

"With regard to commodities which move to or from a large number of shipping points, Mr. Jefferson indicated that he would be unable to make any distinction between shippers."

Well, of course he could not. Now, do you think that the general submission of the Canadian Pacific means something different? You say it does, because you say Mr. Jefferson takes the contrary view.

MR. FRAWLEY: Well, my lord, this is developed as we go along, and it may be that your lordship---

THE CHAIRMAN: When you give us an extract from the C.P.R.'s case on the one hand, and then say that their own witness takes a contrary view, I think that ought to be cleared up.

MR. FRAWLEY: Yes, my lord. As I read this extract from their submission, they indicate that it is not a practicable thing to equalize these commodity rates, because there are---

THE CHAIRMAN: Pardon me. What does that mean? It is point to point.

MR. FRAWLEY: Yes.

THE CHAIRMAN: The same point, I take it.

MR. FRAWLEY: Well, a point to point commodity rate, say Calgary to Edmonton, and another one Ottawa to Montreal -

something of that sort.

THE CHAIRMAN: Oh, yes; different points, though.

MR. FRAWLEY: Oh, yes, my lord; but those are called point to point. A rate from Montreal to Ottawa is called a point to point commodity rate, and a rate from Calgary to Edmonton is called a point to point commodity rate.

COMMISSIONER ANGUS: And the equalization is between different pairs of points ?

MR. FRAWLEY: Yes, sir.

THE CHAIRMAN: In the one case they may be lower on account of a competitive situation.

MR. FRAWLEY: Yes.

THE CHAIRMAN: And in the other case that is not so.

MR. FRAWLEY: Yes. I go along with any differences due to competitive conditions; I agree with that, but that is pretty well where I stop. I say other conditions must not be allowed to enter into any difference in those two sets of commodity rates, sir.

THE CHAIRMAN: Why do you say, then, that Mr. Jefferson's evidence is quite to the contrary?

MR. FRAWLEY: Well, sir, as I read what they say at page 75, they say, "they reflect not only local conditions but also reflect the needs of local industries, and therefore it is not practicable to attempt to equalize these rates." In other words, there is a rate on steel from Hamilton to some place a hundred miles away, and that is X cents. There is a rate on steel from Medicine Hat, Alberta, to a point a hundred miles away. They are quite different, sir. We say they should be the same.

THE CHAIRMAN: Unless there is competition.

MR. FRAWLEY: Oh, yes, always that. Now, the Canadian Pacific seems to say here, if I read what they say correctly at page 75, that there are justifications for making

those rates different, the rate from Hamilton to a point a hundred miles away lower than the rate from Medicine Hat to a point a hundred miles away.

THE CHAIRMAN: Even if there is no competition?

MR. FRAWLEY: I 'mean other than competition.

THE CHAIRMAN: Even if there is no competition?

MR. FRAWLEY: Even if there is no competition, yes, sir.

THE CHAIRMAN: On account of the needs of local industries.

MR. FRAWLEY: The needs of local industries; and they seem to think that that is a consideration.

THE CHAIRMAN: In what respect, then, does Mr. Jefferson go contrary to that?

MR. FRAWLEY: I say that when Mr. Jefferson is discussing it at page 15916- as a matter of fact, sir, I have it actually copied out at the bottom of the same page of my brief, so I think if I develop it it will become clear.

COMMISSIONER INNIS: You might just continue, Mr. Frawley.

MR. FRAWLEY: Mr. Jefferson indicated that he would be unable to make any distinction between shippers. The same inability would be evident in the case of a small number of manufacturers of the same commodity, whether competing directly or not.

THE CHAIRMAN: You are inserting the word "small" there, are you?

MR. FRAWLEY: Yes, my lord.

In spite of their frequent claims to the contrary, the railways are seldom able in practice to make allowance for the special needs of individual shippers by means of preferential commodity rates. They have always maintained that they cannot be expected to offset differing costs of production.

This was made quite clear in the course of my cross-examination of Mr. Jefferson (Transcript Vol. 80, p. 15926):

"MR. FRAWLEY: Q. Tell me, Mr. Jefferson, have you any examples of such rates within Western Canada, that is, rates given to particular shipping points to the exclusion of other similar shipping points for the express purpose of assisting industry at the former point?

A. No. If you have any examples I would be glad to discuss them with you, but I have not any.

Q. No, I have not any, but I was wondering whether you had any examples of rates given to particular shipping points for the express purpose of assisting an industry at that point to the exclusion of other similar shipping points?

A. No doubt we have rates in effect to assist industry, but I cannot pick any out at the moment. You would have to be very careful in making a rate to assist an industry if another industry was producing the same product.

Q. That really means then that rate-making to meet the special needs of the shippers would have to have in mind all shippers of a particular commodity as a whole? Is that not so?

A. Would you ask that again?

Q. I say, rate-making, to meet the special needs of the shippers, would have to refer to all shippers of a particular commodity as a whole?

A. Yes, sir. I say that we would treat all shippers alike unless there were some special competitive reasons requiring different treatment of one than the other".

THE CHAIRMAN: He brings it back to the competitive.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Have you any case you can give us of an existing discrimination of this sort? You have spoken of Medicine Hat and a hundred miles, and Hamilton and a hundred miles, and those are theoretical, I suppose. Have you any real cases you can point to where there is a discrimination?

MR. FRAWLEY: Where there is this difference, sir?

THE CHAIRMAN: You see, Mr. Jefferson does not know of any, and he knows quite a lot about rail rates.

MR. FRAWLEY: I say at once, sir, that there are non-competitive commodity rates in effect in Ontario-Quebec that are higher than non-competitive commodity rates on the same commodity in Western Canada, in Alberta.

THE CHAIRMAN: Well, Mr. Jefferson does not know about them; that is what he says. He says he would treat all shippers alike unless there were some special competitive reason.

MR. FRAWLEY: There is one, my lord, that I am told we mentioned in our evidence, and perhaps I might come back to that; I think it is linseed oil, and we will look it up, sir, and give you the reference.

THE CHAIRMAN: In that case you think you can show that Mr. Jefferson was wrong?

MR. FRAWLEY: Well, no. We quite agree with everything that Mr. Jefferson has said here, that it is not just a practicable thing. You do not go to a shipper and make rates specially to meet him, to take care of him. You must have regard when you are doing that to the needs of other shippers of the same commodity. The reason we quote Mr. Jefferson's evidence is to help us along in our submission that there is no practical obstacle to this kind of equalization. That is, of course, obviously what we are endeavouring to meet. We are endeavouring to meet the Canadian Pacific's refusal to come along with us on

the equalization of these non-competitive commodity rates. We do not ask for equalization in competitive rates; we have made that clear. We ask for equalization in class rates. We ask for equalization in non-competitive commodity rates, be they---

THE CHAIRMAN: And you say you have not got that today?

MR. FRAWLEY: Oh, no, we have not got that today, sir, that is quite so, and the Canadian Pacific justified by a lot of local conditions which we say are not germane, are not sufficient to warrant this Commission in rejecting our contentions.

THE CHAIRMAN: And you say they do that notwithstanding Mr. Jefferson's evidence to the contrary.

MR. FRAWLEY: Well, yes, because they say, as I read it, that you must have regard to the needs of the local industry and that, I take it, is a justification then for differing ex Hamilton as against ex Medicine Hat.

THE CHAIRMAN: Well, either Mr. Jefferson and the Canadian Pacific contradict each other or they do not. You say they do. You say Mr. Jefferson's evidence is to the contrary, quite to the contrary.

MR. FRAWLEY: I don't know just quite what to say to your lordship about that. I certainly did not intend ---

THE CHAIRMAN: You have said it. You have said here, "Mr. Jefferson's evidence is quite to the contrary."

MR. FRAWLEY: Quite so, quite so.

THE CHAIRMAN: We do not want to get mixed up. Are you relying on Mr. Jefferson or are you not?

MR. FRAWLEY: Oh, yes, I am relying on what Mr. Jefferson says in his evidence, because he agreed with me that this business of making a special rate to meet the local needs, the needs of local industry, is not something that is important.

He could not tell me of a single one. Now, I do not want to make too much of a point of it, but it seems to me that what they say on page 75 of Part II is not just that.

THE CHAIRMAN: Perhaps they might justify shipping steel a hundred miles in Ontario to a place where there is a plant on the ground that the rates should be lower there because there is a plant there, and in Alberta there is no plant there, therefore the rate---

MR. FRAWLEY: Well, of course---

THE CHAIRMAN: Would you say that even if there is a plant in Alberta the same distance from the point of supply, you find different rates, not justified by competition?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: That is the case today, is it?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Well, I am asking you to give us something.

MR. FRAWLEY: Yes. We did find some, and we brought them to the attention of some of the Canadian Pacific witnesses. I think we brought asphalt to the attention of the Canadian Pacific witnesses. That was a class rate, perhaps.

THE CHAIRMAN: Have you ever brought them to the attention of the Board?

MR. FRAWLEY: The Board? Oh, well, certainly I have not, my lord. If your lordship means---

THE CHAIRMAN: Has the Board power today to correct any such discrimination because of that?

MR. FRAWLEY: Well, I don't know, my lord. At that point I would like to call your attention to what they said in Plunkett and Savage versus Express Traffic Association, in 1923, reported in 28 C.R.C. 402, 405:

"Mere rate comparisons are not conclusive. No inferences can be drawn from mere comparison of distance

on different portions of railways. Where a complaint of discrimination is raised on mere comparison of distance, the Board has held that this should be supported by other evidence. Without exhausting the generality of evidence, it has been held that circumstances in relation to cost of construction maintenance and operation, volume of traffic, etc., are material.

"Mere mileage comparisons"---

THE CHAIRMAN: Those things are material.

MR. FRAWLEY: So the Board says.

THE CHAIRMAN: And you say they are not material,

MR. FRAWLEY: I say they are not material.

THE CHAIRMAN: And that the Board should not have power to consider them as material?

MR. FRAWLEY: No, that they should be the same, sir, except for competition.

"Mere mileage comparisons, therefore, between different sections of a railway need to be supported by some evidence as to similarity, if not identity, of conditions before that prima facie case is made out which shifts the burden to the transportation company."

THE CHAIRMAN: Although the cost may be greater to the railway in one case than the other, the rate should be the same?

MR. FRAWLEY: That is right, sir. That is the kind of equalization in these special commodity rates that we say we should have and we are entitled to.

THE CHAIRMAN: And compulsory; the Board should have no discrimination---

MR. FRAWLEY: Yes, subject to the proviso that we have put in.

THE CHAIRMAN: And you think these suggested amendments give you that?

MR. FRAWLEY: Yes, my lord, That is the purpose of my amendment, sir.

THE CHAIRMAN: Any decrease in a rate of that sort in one part of the country would operate automatically as a decrease all over the country where there is the same mileage and the same commodity.

MR. FRAWLEY: As long as it is not due to competition, sir. Moving out of Halifax out of Hamilton, out of Edmonton, out of Moose Jaw, they should be the same, sir, so long as it is the same kind of commodity and the same kind of movement, and everything else the same, and competitive---

THE CHAIRMAN: Would the railway then be unable to help build up a new industry by giving it special rates?

MR. FRAWLEY: We have something special that we intend to propose with respect to that, sir.

THE CHAIRMAN: Which would be another exception, as well as competition; is that it?

MR. FRAWLEY: That is right, sir.

Similar rates are always charged (excluding cases where competition is involved) within recognized rate territories. This means that within Eastern Canada the Alberta proposal with regard to specific non-competitive rates is essentially already in effect. Similarly, the Alberta proposal is currently in effect within Western Canada - since the elimination of Pacific Territory as a distinctive rate territory.

There remains the possibility of differences between specific commodity rates in Eastern Canada and specific commodity rates in Western Canada.

THE CHAIRMAN: I just want to make sure where you are drawing the line there between specific commodities in Eastern Canada.

MR. FRAWLEY: I have added in my copy, sir, to make

it a little more clear, "and specific commodity rates in Western Canada." That is a little repetitious, but it makes it quite clear.

There remains the possibility of differences between specific commodity rates in Eastern Canada and specific commodity rates in Western Canada. The number of instances of rates specially adjusted to "shippers' needs" is actually very small. Mr. Jefferson could give no examples of current rates made on such principles, and it may well be the case that there are none. From this, it is clear that the Alberta proposal for the equalization of specific commodity rates is a practical one. I suggest that such differences in the level of such rates as now exist is due not to the "need" of the shippers but to the shippers' bargaining strength with the carriers.

THE CHAIRMAN: You say such differences in the level of such rates as now exist; you take for granted that they are there.

MR. FRAWLEY: Yes, my lord, I am taking it for granted that they are.

Evidence of Mr. Jefferson to which I have referred has not indicated that the railways' initiative in rate-making would be hampered by the equalization of non-competitive commodity rates. Much as been said of the importance of private negotiation of rates between shipper and carrier. I do not question the usefulness of such negotiations to the shipper, but I would point out that the bulk of such negotiations - and speaking only of those concerning practical propositions which the railways are free to accept - would either not be affected or their cause removed by the equalization of commodity rates.

Rate negotiations issuing in new rates are concerned in the main with -

- (1) new commodities where value of service must be ascertained, or
- (2) with the level of rates affecting all movements of a single commodity, as opposed to a specific movement, or
- (3) with competitive conditions.

THE CHAIRMAN: Can you give me an idea of a new commodity?

MR. FRAWLEY: Well, there might be a new chemical proposed, perhaps manufactured out of Alberta gas.

All of these cases are adequately provided for in the Alberta recommendations. There is a fourth type of rate negotiation which might be mentioned, and that is where a shipper or group of shippers seek rates on a level comparable to the lower level existing in other parts of the country. If equalization as advocated by Alberta is put into effect, the motive for this class of negotiation will disappear.

SUMMARY

Equalization of rates has been a contentious issue from the earliest period of the Board's existence. It has been demanded by Western Canada time and again before the Board. (I refer to the Western Rates Case, 1914; Decrease in Rates, 1922; General Rate Investigation, 1927; 21% Case, 1948).

THE CHAIRMAN: Pardon me, you referred a while ago to a case where the Board justified these discrepancies in rates on certain grounds which you say should

be removed. Give me that case. I didn't take it down.

MR. FRAWLEY: I think this is the case, my lord. Plunkett & Savage v. Express Traffic Association, 28 Canadian Railway Cases, 402 at 405.

In the General Rate Investigation of 1927 the Board was directed by the well-known passage in P.C. 886 to -

"make a thorough investigation of the rate structure with a view to the establishment of a fair and reasonable rate structure, which will, under substantially similar circumstances and conditions, be equal in its application to all persons and localities."

THE CHAIRMAN: There you have a condition which you do not like.

MR. FRAWLEY: Yes, we do not like it, sir.

THE CHAIRMAN: "Substantially similar circumstances and conditions", you want to strike that out?

MR. FRAWLEY: We want to strike it out in 314, but 314 is not an equalizing section: it does not matter.

THE CHAIRMAN: I know, but it is an equalizing section.

MR. FRAWLEY: In my respectful submission, it is not, and it should not be.

THE CHAIRMAN: It says so, it says that rates shall be equal along the same line of railway for the same description of goods. The word "equal" is used there.

MR. FRAWLEY: Quite so, but I say that all it means is, from the same origin to the same destination.

THE CHAIRMAN: Now, you point to this commitment of the Board in 1927 to make a thorough investigation of the rate structure with a view to establishing a fair and reasonable rate structure under substantially similar circumstances and conditions. Are you satisfied with those words?

MR. FRAWLEY: No, not satisfied, my lord. I am so dissatisfied with them that I think P.C.1487, the paragraph, terms of reference, should be repealed and those words should be struck out.

THE CHAIRMAN: And this should read, according to you: "the establishment of a fair and reasonable rate structure which will be equal in its application to all persons and localities"?

MR. FRAWLEY: Well, if you like, sir, yes.

THE CHAIRMAN: That is, striking out the words "under substantially similar circumstances and conditions"?

MR. FRAWLEY: As far as I am concerned, those words should not be there; they are simply stumbling blocks.

THE CHAIRMAN: The only thing that you leave for distinction is competition?

MR. FRAWLEY: For distinction, competition, subject to such departures as we allow by the proviso to our section.

THE CHAIRMAN: You see, if you are leaving competition, you might have to add a few words.

MR. FRAWLEY: But after all, my lord ----

THE CHAIRMAN: When you strike out
"substantially similar circumstances".

MR. FRAWLEY: My lord, I am only using this,
your lordship will understand, just to say a word
historically as to what happened, and what happened
I think perhaps because of those limitation words.

We have questioned the adequacy of the reasons
given by the Board and by the railways for stopping
short of full equalization in 1927. That many of the
alleged obstacles were greatly over-rated then is evident
from the Canadian Pacific's willingness at the present
time to carry out a measure of equalization of class
and commodity mileage rates. No explanation has been
offered for the change of position, nor are we informed
what conditions make equalization any more feasible
to-day than it was in 1927. The equalization
proposals made to the Commission to-day could have
been instituted at the time of the General Rates
Investigation in 1927. Four reasons suggest them-
selves why this was not done:

THE CHAIRMAN: In the first place, we don't
know yet what this proposed measure of equalization is.

MR. FRAWLEY: There is some reference to it
in Mr. Jefferson's evidence and in the brief. The
brief does contain ----

THE CHAIRMAN: You mean the C.P.R. brief?

MR. FRAWLEY: Oh, yes, the C.P.R. brief.

I say, four reasons suggest themselves why it was
not done:-

(1) The Railway Act did not expressly require

equalization.

- (2) The Board had an essentially negative view of its functions and considered that its duties in the General Investigation were chiefly to remove any unjust discrimination.
- (3) The railways opposed equalization at that time and defended the status quo on all rate matters.
- (4) The Board's Judgment indicates that it attached weight to the argument of the railways that their revenues would be affected adversely.

THE CHAIRMAN: Before we go any further, can you give me the reference in the C.P.R. brief that you have in mind there?

MR. FRAWLEY : Yes, my lord.

THE CHAIRMAN: I think that is what you call their conviction?

MR. FRAWLEY: It is in Part II, my lord, page 68 really and following pages.

THE CHAIRMAN: Do they state the principle anywhere as concisely as that?

MR. FRAWLEY: Well, I will find out, my lord. I heard my friend, Mr. Sinclair, say page 64. That is quite right; it really begins there, and I was going from there, the table of contents, and it looked like 68. Turning to it actually at page 68 of Part II:-

"In July of 1948, when the railways filed an application with the Board of Transport Commissioners for a further increase in rates, the railways indicated that during the course of the general investigation undertaken by the Board pursuant to Order-in-Council

P.C. 1487, they would have proposals to make with a view to equalizing rates between Eastern and Western Canada so far as that could feasibly be done. This was intended to provide an assurance to parties interested in rate increase cases that the railways were not only not objecting to a general investigation into such matters but were prepared to make proposals to bring about some measure of equalization.

THE CHAIRMAN: Some measure?

MR. FRAWLEY: Yes, my lord.

"During the course of the hearings before your Commission and in many of the submissions made, the expressed intention of the railways to make proposals for equalization appears to have been ignored. In order to set at rest the complaints with respect to alleged disparity, which have been repeatedly made to your Commission, Canadian Pacific believes that while its studies in connection with its equalization proposals are not complete, some outline of the nature of these proposals might properly be given to your Commission. In this connection Canadian Pacific points out, as it has done at several stages of the hearings, that the detail of the method as well as the extent to which it can be carried out must depend upon the study of data being obtained by the Board in connection with its waybill study. This data is not as yet fully available and the proposals accordingly cannot yet be crystallized."

Then the next paragraph is perhaps what your lordship wants:-

"With these qualifications, and having in mind the vital necessity of preserving the revenue of the railways, it can be said that the railways propose equalization of the standard class rates, the distributing class rates, and the commodity mileage scales as between Eastern and Western Canada."

Then I think I should read this:-

"On the other hand, the railways do not propose and do not believe it practicable or even desirable, to attempt equalization of special commodity rates or competitive rates. In the case of certain special commodity rates, some of the point-to-point rates are related to commodity mileage scales. Since these commodity mileage scales are to be equalized, they will, to that extent, tend to make possible the equalization of point-to-point commodity rates which are related to them."

Without reading further on what the Canadian Pacific ----

THE CHAIRMAN: They don't go far enough, you say?

MR. FRAWLEY: Not to suit my submission, my lord.

Alberta urges that its amendments to the Railway Act, 329 ss.1 and 329A ss.1 and ss.2, are necessary and effective steps in bringing about and maintaining equalization of freight rates. These amendments will remove any ambiguity concerning the intention of Parliament or of the duty of the Board on the subject of equalization.

DISTRIBUTING RATES AND TOWN TARIFFSTranscript References:

Text of Brief - Vol. 58, pp. 11130 - 33

Evidence-in-Chief - Vol. 58, pp. 11260 -65.

Under the equalization of freight rates proposed by the Canadian Pacific, all regional differences between class rates would be removed . Alberta has further proposed that the present standard class rates be abolished and new standard class rates be established which will be in effect the present distributing and town tariff class rates equalized and made applicable between all stations within Eastern Canada and within Western Canada respectively.

With the Canadian Pacific's intention to preserve both standard and distributing class rates side by side Alberta strongly disagrees. The amount of traffic moving on the present standard class rates is small; it is quite insignificant if international traffic in Western Canada is excluded. This dual system of class rates is distinctly discriminatory against stations not fortunate enough to have been designated as distributing points. The Canadian Pacific offered two reasons in justification of this dual system:

- (1) The absence of a wholesale distributor at places not granted distributing rates, and
- (2) The light volume of traffic at points that are not rated as distributing points.

Neither of these reasons is worthy of any serious consideration. Class rates are rates of the widest application and should be available on the same basis to all persons and places. Volume of traffic offering

CONFIDENTIAL

CONFIDENTIAL

1. The following information was obtained from a confidential source who has provided reliable information in the past.

2. The source has provided information regarding the activities of the [redacted] group.

3. The source has provided information regarding the activities of the [redacted] group.

4. The source has provided information regarding the activities of the [redacted] group.

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29. The source has provided information regarding the activities of the [redacted] group.

should be no valid reason for discriminating between different shippers using class rates.

THE CHAIRMAN: That is where you expect to get relief in relation to international traffic?

MR. FRAWLEY: Yes, my lord .

In Eastern Canada the standard class rates are paper rates and would continue to be such even were the Canadian Pacific's equalization proposal to be applied.

THE CHAIRMAN: Pardon me, what do you mean by saying "paper rates"? Standard class rates?

MR. FRAWLEY: That is right.

THE CHAIRMAN: They are never used.

MR. FRAWLEY: A very very small proportion, my lord.

In Western Canada, the standard class rates must be used on the Canadian portion of international traffic entering Canada on class rates. However, the Canadian Pacific, according to the evidence of Mr. Jefferson, apparently now contemplates the replacement of the standard rates by distributing rates on traffic moving from the Western gateways (See Vol. 74 p. 15102). Such action would concede Alberta's position on this point.

THE CHAIRMAN: The Western gateways means international?

MR. FRAWLEY: Yes, that is how the traffic comes in.

If the Canadian Pacific seriously contemplates a revision of this nature then its position in seeking to maintain separate scales of standard distributing class rates becomes completely untenable, because, as I

have said, that is the only place where they are of any importance.

THE CHAIRMAN: Do you think that is the trend of Mr. Jefferson's statement?

MR. FRAWLEY: That is what I say, my lord. At page 15102 he says:-

"I might say however, that in any equalization of class rates as a result of the pending general freight rates investigation, it is quite likely that this particular matter may be adjusted by applying the new equalized distributing class rate scale, that is, to and from the international boundary in Canada."

If the Canadian Pacific seriously contemplates a revision of this nature then its position in seeking to maintain separate scales of standard and distributing class rates becomes completely untenable, because this step would leave an even smaller proportion of the total traffic of Western Canada using the standard rates. The more localized the discrimination, the less defensible it becomes.

Now I pass to the rather important question of:-

CLASS RATES BETWEEN EASTERN AND
WESTERN CANADA

Transcript references:-

Text: Vol. 58, pp. 11133 - 35
pp. 11153 - 54

Evidence-in-chief: Vol. 58, pp. 11266 - 89.

I have a very short submission to make on that.

THE CHAIRMAN: When you say class rates between Eastern Canada and Western Canada, you mean goods moving

from one - -

MR. FRAWLEY: From Toronto to Edmonton.

The method of rate-making for long-haul traffic has always been a matter of serious concern to Alberta. At pages 11133 - 35 the nature of the present structure of class rates between Eastern and Western Canada was outlined. It was shown that these class rates were made up of two factors -- an arbitrary from Eastern Canadian points to the Lakehead plus the Fort William Terminal rate for the Western part of the haul. This combination to nearly all Alberta and British Columbia points (and I call your attention to the fact that I am saying, to nearly all Alberta and British Columbia points) actually produces higher rates than if the standard maximum class rates applicable within Prairie territory were used for the same distances.

In other words, important traffic which moves inbound to Alberta -- and the bulk of such traffic from Eastern Canada moves on class rates -- must pay higher rates than the approved maximum rates for Prairie hauls.

No attempt has been made by the railways to defend this situation, and the Canadian Pacific has come forward -- Part II, page 82 -- with an attempt to meet our objection by the assurance that the new class rates between East and West which the Canadian Pacific proposes will not in general exceed the rates for similar mileage on their proposed new equalized distributing scale.

It is impossible to estimate the full implication of this proposal, as it is not known at what level the Canadian Pacific proposes the new distributing rates to be. Nevertheless this is clearly a subject too important to be left to the discretion of the railways. It is one

that calls for a clear statement of principle. Alberta requests this Commission to adopt the recommendations of Alberta as its own, namely:- That the new distributing class rate scale (which under the Alberta equalization proposals would become the new class rates) should be the maximum which the class rates between Eastern and Western Canada should not exceed.

THE CHAIRMAN: Then again, we would have to make that part of the Statute, of the Railway Act?

MR. FRAWLEY: No, we are not proposing any legislation with respect to the remedying of the class rates between East and West, sir.

THE CHAIRMAN: What do you want us to do then? You see, it is directions to the Board that you have asked to provide in the form of amendments to the Act, that is, if the Act is to read so, leave it.

MR. FRAWLEY: If your lordship will look at 329 (1) as we have revised it on page C-9 - -

THE CHAIRMAN: You think that covers the point?

MR. FRAWLEY: I think that would prevent charging us more than the standard maximum mileage tolls. You see, my lord, the difficulty is that there is no through rate scale from Toronto, say, to Edmonton. It breaks at Fort William, and the real difficulty is because of what results from breaking at Fort William. What is considered to be an advantage to us, what is stated to be an advantage to Western Canada in general, is a disadvantage to Alberta, and I point that out on the next page, sir, and I would just like to read that.

THE CHAIRMAN: Pardon me a moment. You say

- that the standard freight tariff shall specify the maximum mileage tolls to be charged for each class of the freight classification for all distances covered by the company's railway.

MR. FRAWLEY: I would think, my lord, that that would prohibit them charging us more because - - I wonder if I should give your lordship an example. You see, the situation today is that the rate from Toronto to Edmonton, for instance, is \$2.40. I just made a note of this example.

THE CHAIRMAN: Would you repeat that please?

MR. FRAWLEY: The rate from Toronto to Edmonton is \$2.40. I want to say at once - -

(Page 21907 follows)

THE CHAIRMAN: On what? What are you talking about?

MR FRAWLEY: That is fifth class; it may be something more than that now, but as of a certain date it was \$2.40. Now, that distance is 2001 miles. Now, if you look at the prairie maximum standard class rates you will find that the rate for 2,000 miles is \$2.31. Now, that concretely is the thing that we complain of, and it does seem to me that this 329 revised would take care of it, but certainly we think that there should be an end to the use of the breaking point at Fort William, which results in charging us more than the maximum standard mileage class rates.

Now, I say at the bottom of page E-2:

This would remove a state of affairs prejudicial to Alberta that has existed since the first fixing of through class rates between Eastern and Western Canada.

The next bit is rather interesting, my lord:

Over the years, the people of Alberta have been assured by the railways and even by the Board itself that there was nothing objectionable in these rates. The fact that the Eastern arbitrary to Fort William was so much less than the local rate to Fort William from say Toronto was offered as proof that Alberta was actually benefitting by the water competition from Eastern points to Fort William. It was overlooked that, while such a claim might have been made with regard to Manitoba and some Saskatchewan points, at the same time Alberta was being penalized by the method of breaking rates at Fort William. As late as the 21% Case, the Board harked back to this argument in rejecting the representations made by Alberta (see p. 62 of Judgment).

THE CHAIRMAN: That is simply because you are

farther away from Fort William.

MR FRAWLEY: That is right, that is right, sir. And we think that we are not so far away that we should be paying more than the standard mileage class rates, because, as I have demonstrated, we would only be paying \$2.31 as against \$2.40 if we were on the maximum prairie rates.

That it should now tacitly be admitted by the railways, without demur, is an indication of the relatively slight extent to which the Board has examined the main features of the rate structure on its own initiative. The persistence of this grievance is one result of the essentially negative administration of the Railway Act by the Board.

THE CHAIRMAN: Now, that is a pretty wide statement to make, isn't it?

MR FRAWLEY: "The essentially negative administration"?

THE CHAIRMAN: Do you say on the whole that the Board has administered the Railway Act negatively?

MR FRAWLEY: Oh, yes, I say that, my lord. I say that more than once in this brief, sir.

THE CHAIRMAN: Without giving consideration to what the Act requires them to do, and so on?

MR FRAWLEY: Well, it may be that the statute is partly at fault, sir. I do not think that it is perversity on the part of the Board, sir.

THE CHAIRMAN: You are talking of the administration of the Railway Act.

MR FRAWLEY: By the Board.

THE CHAIRMAN: You say:

"The persistence of this grievance is one result of the essentially negative administration of the Railway

Act by the Board. "

MR FRAWLEY: It could be better phrased, sir. The administration is negative; that negative administration may come from the imperfections of the Railway Act.

THE CHAIRMAN: No, that is not what you say. you take the Railway Act and say they have administered it negatively; that is, they have not carried it out, they have put it aside, they have acted contrary to its intentions.

MR FRAWLEY: Well, there has been very little initiative. When I say negative administration, my lord, I mean mostly this, that they wait until a complaint is made. Now, that by and large runs through the whole operation of the Act. In fact there is no difference between us in any sort of personal way. I think the Board would probably say, "That is exactly what we do, and that is the proper way to do it." I mean, in fairness, we must not be maligning the Board. It is the approach that they have had. They wait for a complaint. Now, I say that that is wrong, and I say that the grievances from which we suffer in Western Canada have come about because of the fact that they have not on their own initiative gone out to see day by day what the rate situation was. I think that is not an unfair statement. They wait for a general inquiry. Well, there was one in 1927, and, without using extravagant language---

THE CHAIRMAN: You would think that in a complex situation such as this you could find out more from one complainant who has something to show you than from looking to see whether or not there are any situations that somebody ought to be complaining about and not doing it.

MR FRAWLEY: Well, my lord---

THE CHAIRMAN: I am talking about actual practice

now. Don't you think that the fact that there is room for complaints and facilities for hearing complaints is a most useful thing?

MR FRAWLEY: Oh, yes, oh, yes. The door is always open all the time for people to come in and make complaints, but the difficulty is, sir, that you cannot attack a scale, attack a rate structure. If I in Alberta complain that I do not like the fact that I have just been discussing, that the commodity rate to move steel out of Hamilton is more than I have to pay at Medicine Hat, the Board would say to me, "Why are you hurt by what they pay in Hamilton? You go about your business, and talk to us about the Medicine Hat situation. You are not concerned with Hamilton." I say, "Yes, I am concerned with Hamilton. I say that proper equalization should make me the same as Hamilton, and that in this day and age---"

THE CHAIRMAN: Regardless of what the effect may be on Hamilton, even if the Hamilton industry had to go, you would say, let it go, we want the same rate---

MR FRAWLEY: No, my lord. Surely they can bring me down to the Hamilton rate, that is all. Competitive conditions are to one side, entirely to one side.

THE CHAIRMAN: Oh, I know.

MR FRAWLEY: So I say, what is there about Hamilton that it should have a better rate?

THE CHAIRMAN: Then you expect an answer, do you?

MR FRAWLEY: Yes. Well, I address this to the Board, and , while I do not want to paraphrase too generally, the Board does not entertain that sort of thing. They say, "You show us some prejudice to your business," and if I simply say, "It is not good enough to have these two kinds of commodity rate scales," they say, "That is a matter of no concern." They say, "Show us your prejudice, show your

detriment, show how you are hurt." That is my submission, my lord.

I now pass to this rather interesting question of international rates, and it is not particularly long, sir:

INTERNATIONAL RATES

Alberta's submissions with regard to international rates are concerned with two specific grievances:

1. The use of maximum standard class rates for the Canadian factor of international combination rates between United States and Western Canada.
2. The prohibition of certain lower rate combinations via United States railroads between Eastern Canada and Western Canada by means of restrictions in the freight tariffs adopted at the instance of Canadian railways.

THE CHAIRMAN: Pardon me a moment. I want to ask a question. In view of the adoption of daylight saving time, what happens to the trains between here and Montreal?

MR EVANS: Our train to Montreal leaves ten minutes later than it previously did.

THE CHAIRMAN: And there is only a saving of ten minutes to you?

MR EVANS: That is all.

THE CHAIRMAN: Then you would like to adjourn at the usual hour for Friday?

MR EVANS: If that is convenient to your lordship.

THE CHAIRMAN: Well, we will do that. We will adjourn at 4:10.

MR FRAWLEY: 1. Standard Class Rates

The use of standard class rates from border gateways in Western Canada was dealt with at pp. 11135-36 of

Vol. 58, and I have touched upon it already in this argument in discussing the extent to which standard class rates are used at the present time.

It is apparent that these rates to-day find their only extensive application as the Canadian proportionals of international combination rates to Western Canada. They are also used on local movements within Western Canada, but to a very slight extent, and in Ontario-Quebec territory are almost entirely paper rates.

Under the Alberta equalization proposal the present standard class scale would be abolished and a new scale of class rates approximating to the present distributing rate level would be set up. However, the Canadian Pacific proposal for equalization contemplates the retention of both standard and distributing class rates and presumably would continue the use of standard rates from border points. If retention at all of standard class rates were to be recommended - and I submit that the Railways have made out no case for such before this Commission - then it would be imperative that at the very least an exception be made and border rates in both directions be placed on the distributing basis.

THE CHAIRMAN: Pardon me. You are talking only of international rates?

MR FRAWLEY: Of the Canadian proportional of international rates, my lord.

Mr. Jefferson's evidence at p. 15102 (74) gives some indication that the Canadian Pacific might be prepared to accede to such a recommendation. As I read this it sounds rather repetitious, but I think it is not, my lord; it is very short. My submission is that the Commission, whatever the extent to which it is prepared to recommend the equalization of freight rates, should so recommend

that in no case will international class-rate traffic to and from Western Canada be required to pay the maximum mileage tolls. The volume and nature of this traffic is important to Western Canada and it is also important to the Canadian railways. While there are also through commodity rates over Western border gateways, these rates by no means account for all the traffic. At the very least, on the railways' own views regarding the relationship between volume of traffic and rates, the border gateways are entitled to the same rates as distributing points.

2. Combination Rates via the United States

Traffic between Eastern and Western Canada, in addition to moving over all-Canadian routes, may move via the United States over a number of authorized routes and pay the same rates as charged over all-Canadian routes. However, it is also possible in some cases to make up combinations of local rates from points in Canada through the United States to Canadian destinations, which are lower rates than the through rates published between Canadian points. In both the United States and in Canada - except in the case of proportional rates or certain competitive rates - such combinations are permitted as a matter of course. For example, the lowest rates from Eastern Canada to Edmonton or Calgary are often the transcontinental rates to Vancouver plus the local rate from Vancouver, if that will make a better rate than the published rate to Edmonton.

However, a number of United States tariffs contain the express provision that the rates contained therein are not to be used in making combination rates between two Canadian points. No similar restriction exists against applying the rates in combinations on other hauls. Both Mr. Jefferson's evidence on this subject and the letter of

Agent Kipp to the Interstate Commerce Commission read by myself at p. 16134 of volume 81 make it quite clear that this provision was originally put in at the instigation of the Canadian carriers in order to prevent any break in their own rate structure.

The practical effect of this prohibition in United States tariffs is to deprive Alberta of whatever benefit might be derived from having a competitive factor in rates from Eastern Canada. American lines enter Western Canada at Winnipeg, in the British Columbia interior and at Vancouver, while water competition has influenced rates to the Pacific Coast. No American lines enter Saskatchewan or Alberta and the Canadian railways have been able to insulate those provinces from outside rail competition. We are accustomed to being told by the railways and the Board that our lack of competitive conditions on our long-haul traffic is a natural disadvantage which we owe to our geography. These tariff restrictions are in no sense a natural disadvantage. They constitute a deliberate attempt of the Canadian railways to stifle competition by a means which, at first glance, appears to be beyond the powers of the Transport Board to remedy.

THE CHAIRMAN: When you use the word "tariff" there, you mean railway tariff?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Not the customs tariff.

MR FRAWLEY: There are good grounds upon which any such attempt to limit the application of United States freight rates to Canada should not be countenanced:

1. The American carriers obtain the benefit of no similar provisions in Canadian tariffs to prevent Canadian rates undercutting the American rate structure.
2. The fact that such combinations via the United States

can produce lower rates than the through all-Canadian rates to Alberta is evidence of the unreasonably high level of the all-Canadian rates between Eastern Canada and Alberta.

- (a) United States rates used in the combinations have taken higher percentage increases than Canadian rates.
- (b) The combinations using United States rates are two- and three-factor rates, which in itself would indicate that they should normally be higher than single factor rates for the same distance.
- (c) The United States rates are not truck competitive rates of the type which cannot be used in combinations on any movements without rebilling.
- (d) The Canadian class rates to Alberta are actually higher than rates for equivalent distances on the Prairie standard mileage scale.

To remedy this injustice, I propose that the following sub-section (2) be added to Section 338 of the Railway Act. This will be found in the Transcript at page 20015 in volume 108.

THE CHAIRMAN: This is the same one you are reproducing over again, is it?

MR FRAWLEY: No; this is the first time this has appeared, my lord.

THE CHAIRMAN: You say, "I propose that the following subsection"---

MR FRAWLEY: -- "be added to Section 338 of the Railway Act."

THE CHAIRMAN: "This will be found in the Transcript."

MR FRAWLEY: It was put in, my lord. You may remember that my amendments have been in the record for some weeks, and now it appears here, sir.

THE CHAIRMAN: All right, we will go into it now.

MR FRAWLEY: Yes. Perhaps it might be well if I

just took a moment to read that. I am simply adding a new sub-section.

THE CHAIRMAN: That is, you leave the original 338?

MR FRAWLEY: Oh, yes, I do not touch 338. I am reading 338:

"When traffic is to pass over any continuous route from a point in Canada through a foreign country into Canada, or from any point in Canada to a foreign country, and such route is operated by two or more companies, whether Canadian or foreign, the several companies shall file with the Board a joint tariff for such continuous route."

That remains there. I only read it to indicate why I am tacking this on now. I add this sub-section:

"(2) When a combination of local tolls on traffic moving from a point in Canada through a foreign country into Canada makes a lower charge than the toll or tolls charged for the same description of traffic moving between the same two points in Canada over a line or route lying wholly within Canada, such lower combination of tolls shall apply over the lines or routes upon which it is based:

Provided that where prohibition of the charging of such combination of tolls between points in Canada is made in tariffs not subject to the jurisdiction of the Board, the said lower combination of tolls shall be applicable between the same two points over continuous routes lying wholly within Canada."

In other words, my lord, if the prohibition is in a tariff which the Board of Transport Commissioners controls,

it is removed by the main portion of the sub-section down to the colon; if the prohibition is in a tariff of the United States, on United States railroads, then the prohibition remains but the rate over the United States lines becomes the maximum rate over the Canadian lines.

The purport of this amendment can be explained in a few words.

It must be borne in mind that some of the tariffs in which this objectionable restriction appears are United States tariffs not under the Board's jurisdiction. The first part of the subsection as far as the beginning of the proviso, therefore, would only apply if such a restriction did happen to be published in a tariff subject to the Board's authority. The proviso takes care of the situation where the restriction against use of the rates in combinations between Canadian points is published in United States tariffs. If a shipper can show that a lower combination exists but cannot be used solely by virtue of the restriction placed in United States tariffs, then the subsection provides that the amount of the said combination shall be the effective rate to be charged on this particular movement by the Canadian railways over routes wholly within Canada.

THE CHAIRMAN: Just a moment, now. This subsection applies only to that one movement, originating in Canada, going through the States and back into Canada; is that it?

MR FRAWLEY: That is right, my lord.

The amendment will permit Western Prairie points to obtain some benefit from outside rail competition similar to that which other parts of Canada have enjoyed.

I cannot emphasize that too much. That is all we are seeking, is to get some benefit from outside rail com-

Mr. Frawley

petition which other parts of Canada enjoy.

In the second place, it will retain the traffic on the Canadian lines.

THE CHAIRMAN: Can you give me some idea of where you expect that happy result to follow, where these points are between Alberta and the United States?

MR FRAWLEY: Yes, my lord, I will give you one.

THE CHAIRMAN: You might just refer us to the evidence.

MR FRAWLEY: I have an exhibit, my lord; I think it is 236. I went to the trouble of showing that from a point in Essex County close to Detroit, called Belle River, canned goods could move to Detroit, from Detroit to Sweet Grass, Montana, enter at the Coutts gateway and go to Calgary, for less than the cost of going from Belle River, Ontario, to Calgary via Toronto and Sudbury and Winnipeg. Now, when I examined that matter and tried to use it I found right in the tariff a restriction which said that these combinations cannot be used to make a rate from a point in Canada to a point in Canada, and so I set about to see what could be done about it.

THE CHAIRMAN: Well, we will adjourn now.

By the way, before we adjourn I wish to say that we will not sit one day next week, and we are not sure whether it will be Tuesday or Wednesday, but Mr. Covert will keep you advised as early as that is decided on.

MR FRAWLEY: Monday the Commission will sit?

THE CHAIRMAN: We will sit Monday, but we may not sit Tuesday, or we may sit Tuesday, but in that case we will not sit on Wednesday.

---The Commission adjourned at 4:10 p.m., to meet again at 10:30 a.m. on Monday, May 8, 1950.

A.R.

Canada
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
MONDAY
MAY 8, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D., - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

G. R. Hunter
Secretary

COUNSEL APPEARING:-

F.M. Covert, K.C.	}	Royal Commission on Transportation
G.C. Desmarais, K.C.		
H.C. Friel, K.C.	)	Canadian National Railways
F.C.S. Evans, K.C.	}	Canadian Pacific Railway
K.D.M. Spence		
I.D. Sinclair		
J.J. Frawley, K.C.	)	Province of Alberta
J. Paul Barry	)	Province of New Brunswick
C.W. Brazier	)	Province of British Columbia
P.J. Lewis, K.C.	)	Province of Newfoundland

-21919 -

Ottawa, Ontario,
Monday, May 8, 1950.

M O R N I N G S E S S I O N

THE CHAIRMAN: All right, Mr. Frawley.

ARGUMENT BY MR. FRAWLEY(Cont'd):

My lord, just as we were finishing on Friday afternoon I was discussing the additional section to section 338 that I was suggesting, and dealing with those restrictive conditions in the tariffs which prevent the use of the United States rates.

THE CHAIRMAN: You are referring to the page you were on?

MR. FRAWLEY: Page F-7 of my brief. You had asked me on Friday if I could give you an idea of whether that result might follow.

THE CHAIRMAN: What result?

MR. FRAWLEY: The page of the transcript is 21918, but it was when I was discussing it at pages F-6 and F-7 of my brief.

THE CHAIRMAN: About international rates.

MR. FRAWLEY: Yes, about international rates, yes, my lord. That is the general subject that I am on. I had just got to page F-7, and I wanted to give your lordship the correct number of the exhibit. I said at page 21918 I thought the exhibit number was 236. The exhibit number is 136, and it was put into the record at page 11921 of Volume 61.

THE CHAIRMAN: Volume 61, page what?

MR. FRAWLEY: Page 11921. I think I will just pass from that because the exhibit quite well speaks for itself, and it shows that if we could use these rates from certain points - and quite admittedly only from certain points

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near the international border which of course would mean the rather important districts of Essex county and the Niagara Peninsula, but in any event if we could use these American rates we could deliver certain kinds of goods cheaper to Alberta destinations than now by having to use all Canadian lines. The amendment I suggested will, in my submission, correct that situation. Going on then at page F-7 I have just another paragraph before I complete that.

The amendment will permit Western Prairie points to obtain some benefit from outside rail competition similar to that which other parts of Canada have enjoyed. In the second place, it will retain the traffic on the Canadian lines. Since the objectionable restrictions in the United States tariffs cannot be repealed by order of the Board, they may remain to prevent the actual physical use of American lines in connection with such rates. The amended subsection leaves Western Canada free to take advantage of the lowest transportation charges, but at the same time assures the retention of the traffic on Canadian lines.

The next matter I want to discuss, sir, is competitive rates but before I do that I want to go back and discuss for a few moments Section 314 and Section 329(a) which we were discussing on Friday. I wanted to wait until I had completed what I said on equalization before going back to the subject. I think it is well to do it now rather than wait until the completion of my entire argument.

THE CHAIRMAN: Are you referring again to that amendment you proposed about Section 314?

MR. FRAWLEY: Yes, I want to go back and discuss that with your lordship and the commissioners for a moment.

THE CHAIRMAN: Where will that be found?

MR. FRAWLEY: That may be found on page C-4. That

was the discussion that arose at page C-4. Now, my lord, let me put it this way. These are the things that we did to the present Section 314, subsection 1, and these are the reasons why we did it.

First we defined the phrase, "over the same line or route." We defined that by adding immediately following those words the words, "from the same origin to the same destination". They were put in there purely to define this rather troublesome and equivocal phrase, "over the same line or route". That amendment of ours in those words removes any doubt as to whether, for example, Regina to Medicine Hat is over the same line or route as Montreal to Sudbury. Under our revised section of course it certainly is not.

Then the only other change was that we struck out the words, "under substantially similar circumstances and conditions". Why did we do that? We did that because they are quite unnecessary in the subsection now because if the two movements to be compared are from the same origin to the same destination then they move under the same circumstances and conditions. In other words, and this is the important thing, my lord, differing operating conditions can no longer be permissible distinctions between any two shipments as they were.

THE CHAIRMAN: What is that?

MR. FRAWLEY: Differing operating conditions, differing terrain, differing density of traffic and those kind of things we want to get away from could have been used against us, if I may use the expression.

THE CHAIRMAN: I do not think so.

MR. FRAWLEY: Under substantially similar circumstances and conditions.

THE CHAIRMAN: You are talking here of from one

point to another point.

MR. FRAWLEY: Yes. Now we have removed any doubt, sir. We have removed any doubt and we say the section now only means that you must charge the same rate from the same point to the same point.

THE CHAIRMAN: Must you not today?

MR. FRAWLEY: What is that?

THE CHAIRMAN: Must you not today charge the same rate from point A to point B on the same commodity?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: To all shippers.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Isn't that all you are saying here in this amendment?

MR. FRAWLEY: As we leave it.

THE CHAIRMAN: As it is there. Are you going to change it again?

MR. FRAWLEY: No, my lord.

THE CHAIRMAN: Am I right in this? I should like to be corrected if I am wrong. Am I right that any commodity leaving A to go to B, no matter how far apart those two points may be, carries the same toll for all shippers? I gave the example of potatoes but it might be any other commodity. If they leave Fredericton to go to Montreal it does not matter what shipper brings them into Fredericton. He pays the same toll as all other shippers. Isn't that right?

MR. FRAWLEY: That is right, my lord.

(Page 21925 follows)

THE CHAIRMAN: Is that not right?

MR. FRAWLEY: That is right.

THE CHAIRMAN: What else are you doing in this amendment of yours but stating that?

MR. FRAWLEY: What I say about that is this. That is so. They are charged the same tolls by virtue of the statute.

THE CHAIRMAN: Yes.

MR. FRAWLEY: By virtue of the statute.

THE CHAIRMAN: What statute?

MR. FRAWLEY: The Railway Act. There is a statutory provision against that kind of personal discrimination.

THE CHAIRMAN: Where is that in the Railway Act?

MR. FRAWLEY: It is there now, sir.

THE CHAIRMAN: Where?

MR. FRAWLEY: There is section 316; section 314 itself and section 316 dealing with facilities. I deal with section 314 --

THE CHAIRMAN: Never mind section 314. You ask us to put into effect a new section or a new sub-section which adds nothing to the law. Is that not so?

MR. FRAWLEY: May I put it this way, my lord. It prohibits personal discrimination, clearly and unequivocally.

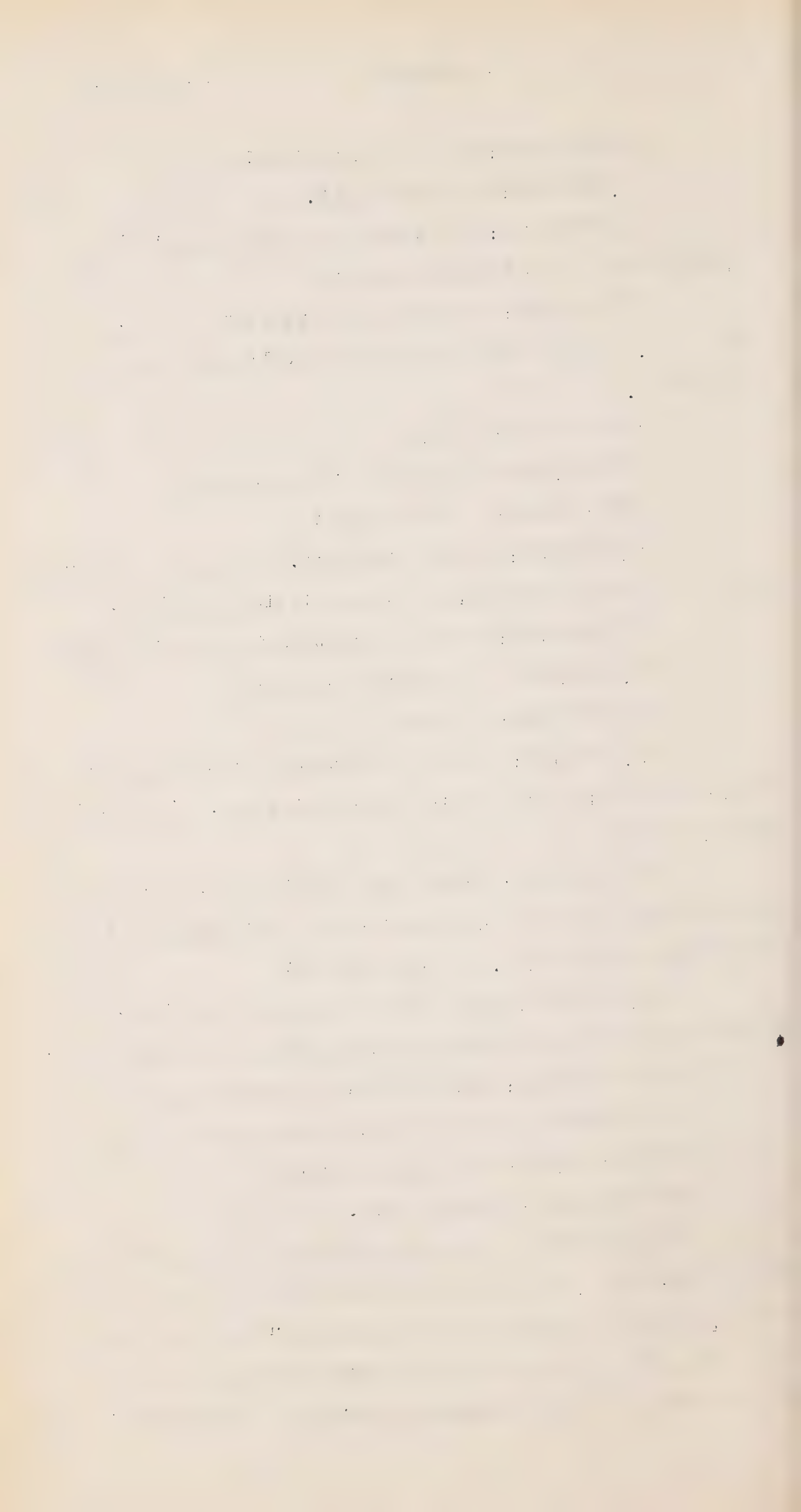
THE CHAIRMAN: Which the law prohibits now.

MR. FRAWLEY: Only because of that same section.

THE CHAIRMAN: What same section?

MR. FRAWLEY: Section 314.

THE CHAIRMAN: I really think you are misunderstanding the situation. Section 314 is to provide the same rate for all points for traffic of the same kind, the same rate on the same line, for the same description of goods, save where circumstances and conditions justify a difference.



MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: But here in this proposed amendment of yours, you are dealing only with two points.

MR. FRAWLEY: Yes.

THE CHAIRMAN: A and B.

MR. FRAWLEY: Yes.

THE CHAIRMAN: And you say that all goods of a certain description carried from A to B must bear the same toll for all shippers.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Is there anything in the Act now which would allow the railways to do differently?

MR. FRAWLEY: May I put it this way. There used to be secret rebates and concessions and all that sort of thing. It is just the kind of prohibition which prevents the railways engaging in secret rebates, concessions and so on. I am quite certain they have not done that for years and years; I have no knowledge that they ever did it.

THE CHAIRMAN: If they do it today, they are violating the law.

MR. FRAWLEY: Yes, they are violating the law.

THE CHAIRMAN: They may keep on violating the law, according to what you say. I do not know anything at all whether they do indulge in secret rebates and so on.

MR. FRAWLEY: That is prohibited now. That is section 314 as I have left it. That makes it abundantly clear. We have deleted "under substantially similar circumstances and conditions and after the words "Same line or route," we have added, from the same origin to the same destination."

THE CHAIRMAN: Never mind "the same line." How can it be when they are shipped from one point to another? I gave you a case of Fredericton to Montreal. That is what you are covering. You are saying in effect that all commodities

or all goods of the same description shipped from Fredericton to Montreal must be carried at the same toll for all shippers.

MR. FRAWLEY: I say that now.

THE CHAIRMAN: I beg your pardon?

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: By doing that, you are not adding a word to the law as it is. You say you are making it clearer?

MR. FRAWLEY: Yes. I am making it clearer.

THE CHAIRMAN: In my opinion you are not dealing with the matter dealt within the present section 314 which has not to do with one point to another point but with all points along the same line of railway.

MR. FRAWLEY: Let me put it this way. This section 314 is not our equalization section. We turn our back on section 314 for that. We do not look upon it for that. We do not wish it to be used as an equalization section.

THE CHAIRMAN: Do you want to strike it out altogether?

MR. FRAWLEY: As an equalization section, yes; strike it out all together.

THE CHAIRMAN: All right. If you strike it out all together for one purpose, you strike it out for all purposes.

MR. FRAWLEY: Yes. But I am leaving it there to prohibit personal discrimination.

THE CHAIRMAN: You are asking that it be struck out. You say:

"We therefore recommend that sub-section 1 of section 314 be repealed."

MR. FRAWLEY: Yes, and my sub-section 1, be put in its place.

THE CHAIRMAN: But in my opinion you are replacing an apple by an orange; that is to say, you are replacing it with something of a totally different character. What would be left if we took a number of points along the line, all going to

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market, all along the same line; ^{suppose} those points are A, B, C, and D, and they are getting to the destination X, and the ^{is} rate granted to A which the people in B say is discriminating against them. That is what is intended to be prohibited by section 314.

MR. FRAWLEY: Not by section 314 (1).

THE CHAIRMAN: Yes, by section 314 (1).

MR. FRAWLEY: No; section 314 (4).

THE CHAIRMAN: Section 314 (1) reads as follows:

"All tolls shall always under substantially similar circumstances and conditions, in respect of all traffic of the same description, and carried in or upon the like kind of cars or conveyances, passing over the same line or route, be charged equally to all persons and at the same rate, whether by weight, mileage or otherwise."

Then if any shipper finds out that somebody on the same line shipping from another point is getting a toll which is advantageous to him, and disadvantageous to the complainant, he can complain about it.

MR. FRAWLEY: My lord, for clarity's sake, let me put it this way. If I were shipping from Montreal to Sudbury and you were shipping from Edmonton to Saskatoon, we will say, I could not use section 314 (1) to require the railways to charge me, shipping from Edmonton to Saskatoon, what they charged you from Montreal to Sudbury.

THE CHAIRMAN: Could you use this new amendment?

MR. FRAWLEY: No. I do not want to use it for that purpose. It is section 329 that I use for equalization.

THE CHAIRMAN: Where is your 329?

MR. FRAWLEY: Section 329 is what I am submitting for equalization. I only deal with section 314 to sort of clear it up before I pass on to what I really rely upon as my equalization section.

THE CHAIRMAN: You are clearing it up by substituting something that would cover another question.

MR. FRAWLEY: Except, my lord --

THE CHAIRMAN: Where is section 329.

MR. FRAWLEY: Section 329 is my equalization section.

THE CHAIRMAN: Where is it?

MR. FRAWLEY: It is at page C-9 of my argument.

THE CHAIRMAN: Pardon me. There is a present section 329 that you are dealing with.

MR. FRAWLEY: Yes. Section 329 (1) that I am dealing with, and I have revised that, sir. I am not changing sub-section 2 but I am revising section 329 (1). That, in my submission, makes it clear that the standard freight tariff shall be the same for the same distance and the same toll shall be charged by all companies. That in our submission makes equalization of rates.

THE CHAIRMAN: That is still another thing. That is providing where the distances are the same, whether it is on the same line of railway or not, the same toll shall be charged.

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: But section 314 as it is at present in form provides where the goods are on the same line.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: On the same line, not going from one point to another but on the same line.

MR. FRAWLEY: Let me put it this way. As your lordship knows, I am exceedingly anxious to bring about equalization. I want the effect to be that if I am shipping something from Calgary to Medicine Hat, I want ^{the rate on} that to be no more than on the same kind of goods being shipped from say Sudbury to Montreal.

THE CHAIRMAN: I understand that. Is there any reason why you could not submit an amendment that will cover it.

MR. FRAWLEY: I have done that in section 329 and 329(1). But I cannot get that out of section 314 as it stands now. I cannot rely upon section 314 (1) as it is presented in the Act to give me that.

THE CHAIRMAN: Section 314 is meant to protect different people, people who live along the same line of railway and who are all shipping the same commodities to the same market.

MR. FRAWLEY: Yes.

THE CHAIRMAN: It provides that these people, whether they ship from A or from B or from C all to the same market, shall be charged the same tolls. Why do you wish to interfere with that. Is not that a different thing?

MR. FRAWLEY: No. I have not changed that part of section 314.

THE CHAIRMAN: Yes, you have. That is exactly what you are changing by asking us to strike it out.

MR. FRAWLEY: Section 314 (4) takes care of that, in my submission. It reads:

"No toll shall be charged which unjustly discriminates between different localities."

I have left that in. I think it is necessary to get an appreciation of the whole of my amendments. I take section 314, and I change sub-section ¹. I leave sub-section 2 the same, I leave sub-section 3 the same, I leave sub-section 4 the same and that becomes section 314 and I am finished with it. It is not an equalization section. It is not what I rely upon to achieve this much desired equalization. It prohibits personal discrimination. It requires that no toll shall be charged which unjustly discriminates between different

localities. That takes care, in my submission, of what your lordship has said. So I leave section 314 and I am content that it should do just those things. I do not wish it to accomplish any degree of equalization for me. I then go to section 329.

(Page 21934 follows)

THE CHAIRMAN: Perhaps not for you, because I know the kind of equalization you want. What other people may want may be a different kind of equalization.

MR FRAWLEY: Well, my lord, as far as my submission is concerned, the kind of equalization is the same, which is standard tolls always the same, non-competitive commodity rates always the same; that is the kind of equalization. I want, and I say that my 329 and my 329A accomplish that. You see, my lord, it might be helpful if the statutes as I put them in in volume 108 of the transcript were looked at, where they can all be seen together, because then one can appreciate just what changes I have made completely. I have picked out 314 in my argument and have been discussing it, but I do want to say this, that it is not my equalization section, sir. I am not relating on it for equalization. There is too much difficulty with the expression "over the same line or route".

THE CHAIRMAN: Why are you tampering with it at all?

MR FRAWLEY: Well, because it seems to me that it is unnecessary to leave in those words "under substantially similar circumstances and conditions", when I define---

THE CHAIRMAN: But you have just said that it is too confined, it only applies to the same line of railway, and you want to make it equalization for all over Canada on all lines of railway.

MR FRAWLEY: Yes, by other sections.

THE CHAIRMAN: Then why tamper with 314? That is to say, it is dangerous to tamper with an Act which has been in effect for a long time and seems to have met the requirements.

MR FRAWLEY: Well, one danger perhaps---

THE CHAIRMAN: Now your requirements are different from the requirements of that section.

MR FRAWLEY: There is, I think, one real danger. If we leave that expression "under substantially similar circumstances and conditions", then it raises the question at once, in opposition to our equalization sections, then you must go and look at 314, and 314 raises the question of "under substantially similar circumstances and conditions". Then we get into traffic densities and operating terrain---

THE CHAIRMAN: You wish to have a section which, as you say, will provide exactly the same freight rate for any commodity shipper a hundred miles in Nova Scotia or shipped a hundred miles in Alberta; it is a hundred miles in each province, and should have exactly the same rate. That is what you want to provide.

MR FRAWLEY: Yes, but not by 314, sir.

THE CHAIRMAN: That is what you want to provide.

MR FRAWLEY: I want to provide that.

THE CHAIRMAN: You are certainly not providing that by your proposed 314.

MR FRAWLEY: No, my lord, I am not.

THE CHAIRMAN: Then what have you got to provide it? You have provided it then by this new 329?

MR FRAWLEY: 329 (1), 329A, sir.

THE CHAIRMAN: Well, we will go to that. Where is that?

MR FRAWLEY: You will find it reproduced at page C-9, sir.

THE CHAIRMAN: And I think you have told us that the only exception that you would tolerate to that equality would be one brought about for competitive purposes.

MR FRAWLEY: Oh, yes, my lord. I am not seeking to equalize---

THE CHAIRMAN: Are you putting that in your draft?

MR FRAWLEY: Yes, my lord, that is specifically provided for. It is specifically provided for in 329A, sub-section 2, and that is reproduced on page C-10, the very last phrase on the page. Just expressed in a word, my lord---

THE CHAIRMAN: Wait a minute, now. You had better read the whole of the sub-section. It is pretty long; it is all one sentence.

MR FRAWLEY: 329, sir. This is the non-competitive' commodity rates, my lord.

THE CHAIRMAN: The whole thing.

MR FRAWLEY: I will read 329A. I will go to where your lordship was.

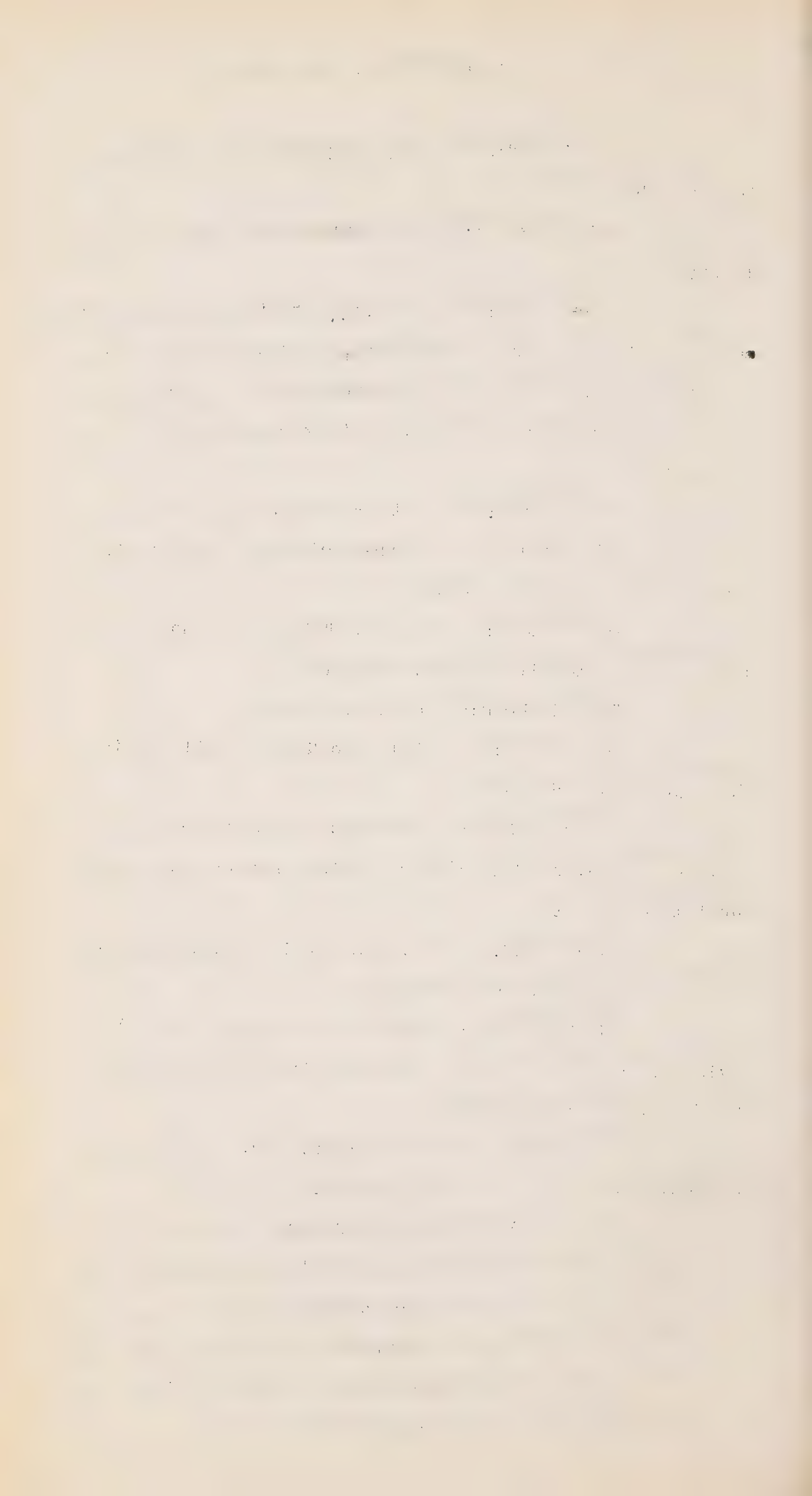
THE CHAIRMAN: You would repeal the present 329, would you, or 329 (1)? Is this a new one you would substitute for it?

MR FRAWLEY: Well, yes, it is a substitution, so that the present one would be---

THE CHAIRMAN: Would be repealed. 329 (1) is revised, and your 329 now -- you mean it is repealed and the following substituted?

MR FRAWLEY: That is right, sir. I will read the whole of 329 as we now have it:

"329. (1) The standard freight tariff shall specify the maximum mileage tolls to be charged for each class of the freight classification for all distances covered by the company's railway and such tolls shall be the same for the same distances and the same tolls shall be charged by all companies.



(2) Such distances may be expressed in blocks or groups and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls."

Now, that is all we leave of 329, sir.

THE CHAIRMAN: Do you strike out 3?

MR FRAWLEY: We strike out 3, because it now appears in the new section 329A, the one that immediately follows, and sub-section 4 is also left out; it appears in the new section 329B, sir.

THE CHAIRMAN: What do you leave of the present 329?

MR FRAWLEY: We leave the first words, sir.

THE CHAIRMAN: I mean, do you leave sub-section 2?

MR FRAWLEY: Of 329? Yes. Sub-section 2 is not changed, and sub-section 1 is practically repeated. If your lordship will look at my 329, I will read the section as it is now in the Act, and if your lordship will read---

THE CHAIRMAN: I have read it; but you are substituting your draft for the present one?

MR FRAWLEY: For the present one, yes, my lord.

THE CHAIRMAN: Strike out the present one and put your draft in.

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: Then you would leave 2 as it is.

MR FRAWLEY: Leave 2 as it is, sir.

THE CHAIRMAN: What do you do with 3?

MR FRAWLEY: 3 is taken out and put into 329A.

THE CHAIRMAN: All right, then, we will go into that.

MR FRAWLEY: It also, of course, is revised, but

it goes out of 329 and goes into our new 329A.

THE CHAIRMAN: Then read that to us.

MR FRAWLEY: Those are standard, yes, my lord. Now we will go to 329A, and I will tell you what we do say, sir. 329A now in our revision consists of three sub-sections. The first sub-section:

"(1) The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway."

THE CHAIRMAN: Pardon me. Who is it that is suggesting that all commodity rates be classified?

MR FRAWLEY: Well, they are all classified now under the official classification, sir, of the railways; all commodity rates are classified now.

THE CHAIRMAN: Well, somebody has been urging on us that the special rates now be numbered, in addition to the ten rates. That would put an end to that for the future, and have the commodity rates made---

MR FRAWLEY: I am told it might have been Manitoba, sir. It might have been Manitoba, I am advised.

THE CHAIRMAN: Well, apart from that here, you would leave them still special rates.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: I beg your pardon?

MR FRAWLEY: Yes, we leave them---

THE CHAIRMAN: You do not agree with Manitoba, then?

MR FRAWLEY: Well, they still would be called special tariffs, yes, my lord. If Manitoba goes further than that, then there is that distinction, but we would

still call them special freight tariffs.

Then the second sub-section, which is an important one -- and that was something else I wanted to discuss this morning -- says---

THE CHAIRMAN: Read the first one first.

MR FRAWLEY: That is the one I have read, sir:

"(1) The special freight tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any particular commodity or commodities, or for each or any class or classes of the freight classification, or to or from a certain point or points on the railway."

(Page 21941 follows)

THE CHAIRMAN: That would include competitive tariffs among others, is that it?

MR. FRAWLEY: No, my lord, we have a special section for competitive tariffs, sub-section 2:-

"The tolls for the same description of traffic charged in the special freight tariffs shall be just and reasonable and shall be the same for the same distances, and such distances may be expressed in blocks or groups and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls; Provided that distinctions in such descriptions of traffic shall be based on the nature and use of the commodity or commodities and shall not be based upon local or regional differences in operating conditions nor upon competitive conditions."

THE CHAIRMAN: Then you seem to exclude competitive conditions?

MR. FRAWLEY: Yes, we specifically exclude competitive conditions, and we do agree that there may be distinctions in those special tariffs but not for local or regional differences, not for operating conditions and not based upon competitive conditions.

THE CHAIRMAN: Let us see then, you say that provided distinctions -- do you mean distinctions of tariff?

MR. FRAWLEY: Such distinctions in descriptions, distinctions in descriptions of traffic.

THE CHAIRMAN: Well, distinctions of what?

MR. FRAWLEY: Distinctions in classifying the

commodities, in giving them special rates based on classification, re-classification, and that sort of thing.

THE CHAIRMAN: Taking it that way, that those distinctions to you must in the future be based upon the nature and use of the commodity or commodities, is that right?

MR. FRAWLEY: Yes.

THE CHAIRMAN: "Shall be based on the nature and use of the commodity or commodities and shall not be based on local or regional differences in operating conditions nor upon competitive conditions"?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Perhaps I don't understand you, perhaps I am wrong, but I thought you said that you would agree with differences based on competitive conditions?

MR. FRAWLEY: Yes, my lord, I am excluding them.

THE CHAIRMAN: Excluding them from what? You see, you are providing that distinctions in such descriptions shall be based -- any distinctions that there are today, you admit that there are cases where there might be distinctions in rates, is that it?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: In special rates?

MR. FRAWLEY: Yes.

THE CHAIRMAN: And you say these distinctions in special rates must be based on the nature and use of the commodity.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: And not on anything else?

MR. FRAWLEY: Yes, that is right, and not on differences in operating conditions.

THE CHAIRMAN: Nor competition?

MR. FRAWLEY: Nor competition, because that is something apart. This is an equalization section and the question of competition is not to come in. We are very clear about that.

THE CHAIRMAN: You bring that in somewhere else?

MR. FRAWLEY: Yes, my lord, in 329B which we have not got to yet.

THE CHAIRMAN: Well, if you are dealing with it somewhere else, why do you bring it in here as well? You bring it in here to exclude it?

MR. FRAWLEY: Yes.

THE CHAIRMAN: You caused me to believe that you were dealing separately with special rates and competitive rates.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: But in dealing with special rates you exclude competitive rates. Why do you do that if you deal with competitive rates elsewhere?

MR. FRAWLEY: Because there is to be, in our concept, no equalization of competitive rates, there is to be no equalization of competitive rates.

THE CHAIRMAN: Don't you say that where you deal with competitive rates? That is the place to say it.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Where do you deal with competitive rates?

MR. FRAWLEY: 329B, sir. I have a whole section that I was just about to commence, my lord, on competitive rates, and probably if I went on to that, my section on competitive rates.

COMPETITIVE RATES

The Alberta submission on competitive rates, with the exception of the long-and-short haul, is to be found at pp. 11142 to 11152 of Vol. 58.

Competitive rates have been excluded from the rate equalization proposed by Alberta because they are, by definition, rates made to meet particular circumstances and which it would be either impossible or inexpedient to make more general in effect. However, we do not accept the conclusion that the competitive rates fall entirely within the discretion of the railways and that the Board's function is merely to remove, upon complaint, unjust discrimination arising out of such rates. I refer to the 21st Judgment at pp. 51-2 where the cases are reviewed showing the Board's attitude towards competitive rates.

I also call the Commission's attention to page 3265 of Vol. 17 and to the letter from the Transport Board to the British Columbia Canned Foods Association which reads as follows in part:-

"The Board has repeatedly held that it is within the discretion of the railways to meet competition or to withdraw therefrom. The Board's powers are necessarily limited to questions of unjust discrimination in regard to competitive rates and not as to

the reasonableness of the rates".

The substance of Alberta's complaint regarding competitive rates is concerned with the comparatively limited role to which the Board has confined its activities. Competitive rates have been involved in many of the more important rate controversies since the formation of the Board. Competitive conditions have varied and still vary widely from region to region in Canada. They have been cited as influences preventing certain reforms in the rate structure, notably equalization. Competitive conditions have been cited in justification of continuing inequalities in the rate structure, although the rates in question have not been designated as competitive rates. (See General Rates Investigation, 17 J.O.R. & R. 131 at 136). I might say that was discussed in the record at page 11146 of Vol. 58.

Some of the main problems involving competitive rates are: (See pp. 11149-51):-

- (1) Status of competitive rates.
- (2) Changes in competitive conditions.
- (3) Relationship of competitive rates to rest of rate structure.

Under the present section 329 ss. 4 a competitive rate is clearly defined as any rate not subject to the long-and-short-haul clause, in other words a rate which violates the long-and-short-haul clause. This is the present Section 329 (4):-

"The competitive tariffs shall specify the toll or tolls, lower than in the standard freight tariff, to be charged by the company for any

class or classes of the freight classification, or for any commodity or commodities to or from any specified point or points which the Board may deem or have declared to be competitive points not subject to the long-and-short-haul clause under the provisions of this Act."

It follows that the rates which do not violate the long-and-short-haul clause (e.g. A truck competitive rate scale) are not technically competitive rates at all but are special rates as defined in sub-section 3 of Section 329.

Sub-section 4 of Section 329 also contains the words "point or points which the Board may deem or have declared to be competitive points....". As I interpret this language, it requires a definite declaration by the Board, after consideration of each case, that competition exists between the two points in question. The sub-section contemplates positive action on the part of the Board with each and every competitive rate published. I raised this point before the Board in argument in the Farm Implements Case, September 1949, and I refer again to the comment of Mr. Coyne, counsel for the Board, on that point, and this is what he said at Volume 59, pp. 11340-41, that is, of this Commission's record.

THE CHAIRMAN: Who said this?

MR. FRAWLEY: Mr. Coyne, counsel for the Board, but ^{it}/is present in this Commission's record because I introduced it and took it from the record of the Transport Board:-

"My lord and members of the Board, I was particularly interested in the argument that my friend Mr. Frawley made with regard to the interpretation of sub-section (4) of Section 329 and sub-section (5) of Section 314; (Sub-section (5) of 314 is what might be called the "long and short haul provision"). As I understand his argument, before a competitive tariff can come into effect the Board must direct its attention to the tariff and make a decision as to it, whether the points in the tariff are competitive points or whether it is expedient to allow those rates. That is contrary to the practice of the Board. Nevertheless, I think Mr. Frawley has shown that there is a serious question whether that practice is in conflict with the provisions of the Railway Act reading those two sections together."

The Board has permitted competitive rates to stand at whatever level the railways choose to put them. Any critical review of a competitive rate by the Board in the vast majority of cases awaits the raising of a complaint.

COMMISSIONER ANGUS: By competitive rates there, do you mean competitive rates as you define them, that is to say, rates between points where the long-and-short-haul provisions do not apply, or do you extend

. your definition to rates that are competitive with trucks?

MR. FRAWLEY: Well, I extend them to all rates which are presently in the tariffs called competitive rates and so, my lord, the whole run, whether or not there has been a proper and strict compliance with 329⁽⁴⁾/or not.

THE CHAIRMAN: 329 (4)?

MR. FRAWLEY: As we have it.

THE CHAIRMAN: That would seem to indicate that the Board must fix points which are to be considered competitive.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: "The Board shall specify the toll or tolls to or from any specified point or points which the Board may deem or have declared to be.....": That is, one or the other, they may deem it presently or have already declared them to be competitive points not subject to the long-and-short-haul clause under the provisions of this Act. Now, is this the only provision of the Railway Act that deals with competitive tolls or tariffs?

MR. FRAWLEY: Well, that is the one that defines them, that is the Section which defines competitive tolls, yes, sir.

THE CHAIRMAN: Is there a further provision which deals with the operation of them, the creation of them?

MR. FRAWLEY: Well, there is Section 332, that should be looked at probably. That talks about the filing of them.

THE CHAIRMAN: Because, you see, you must

read 329 (4) and 332 together.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: You cannot exclude one or the other.

MR. FRAWLEY: No, my lord. This is purely a procedural Section 332, it simply discusses - -

THE CHAIRMAN: 329 is the Section that shows what competitive tariffs mean.

MR. FRAWLEY: That is right.

THE CHAIRMAN: They mean between points which the Board may deem or might have already declared to be competitive points. How do you go about establishing them, to look at Section 332? Are you leaving 332 as it is?

MR. FRAWLEY: Yes, we have 332, but we have added another section. We leave 332 as it is, but we have added a further sub-section. to 329.

THE CHAIRMAN: Section 332 says: "Competitive tariffs shall be filed by the company with the Board"?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: That is, the initiative comes from the company?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: But the company files these tariffs with the Board?

MR. FRAWLEY: Yes, I have a sub-section which, when I get to it - -

THE CHAIRMAN: Giving the date when the company intends the tariff to become effective?

COMMISSIONER INNIS: You have that further along here.

MR. FRAWLEY: I have that in the next three or four pages.

THE CHAIRMAN: But you tell us you are leaving 332 alone .

MR. FRAWLEY: I am adding a sub-section to 329.

THE CHAIRMAN: But you are not disturbing 332?

MR. FRAWLEY: That is right.

Under this kind of regulation, such as it is, I submit the Board can never become effectively seized of the main problems in connection with competitive rates. Complaints before the Board respecting competitive rates are channelled into the one category of "unjust discrimination", which limits the class of successful complaints and limits the remedial action of the Board to particular situations where actual detriment through competition in the same market can be shown. Questions of the general level of competitive rates, whether the competition is still effective, and the relationship of competitive rates to the rest of the rate structure, are not raised by the commonly acceptable form of complaints regarding competitive rates (i.e., those limited to the complaint of unjust discrimination).

As a remedy, Alberta proposes the repeal of sub-section (4) of Section 329 and the substituting of a new Section 329B (See Transcript p. 20013). The new Section 329B will read:-

SECTION 329B:-

"The competitive tariffs shall specify

What the competitive tariffs to specify

the toll or tolls lower than in the standard or special freight tariffs to be charged by the company for any class or classes of the freight classification or for any commodity or commodities, to or from any specified point or points at which there is actual and compelling competition."

And I go on to explain - -

THE CHAIRMAN: You don't refer to the Board there; you strike that out?

MR. FRAWLEY: Yes, my lord, that is what is struck out. I go on to explain that in our new Section 329B the following changes have been made: In the present sub-section (4) of Section 329, the words beginning "which the Board may deem...." to the end of the sub-section are deleted, and the following substituted: "...at which there is actual and compelling competition..".

THE CHAIRMAN: Who is to decide whether or not there is actual and compelling competition? Doesn't the present sub-section leave that to the Board: "....which the Board may deem or have declared to be competitive points..."?

(Page 21951 follows)

MR. FRAWLEY When I come to discuss 332 and the section I have added it indicates the role of the Board there. I refer the Commission to the transcript, Volume 61, p.12048, where Mr. Harries explained the meaning to be attached to these words, the words "actual and compelling competition". I will be discussing that when we come to it, and probably I need not interrupt now to go to that because when we come to our discussion of the long and short haul the meaning of that phrase, "actual and compelling competition" will be explained.

THE CHAIRMAN: You must have somebody empowered to determine.

MR. FRAWLEY: Yes, my lord.

This change of wording removes the necessary statutory connection between competitive rates and the long-and-short-haul clause which I say is there now in the case of 329, Subsection 4. And instead of requiring the Board to declare two points to be competitive points, the new wording provides that the competition must be "actual and compelling". The new Section 329(b) will continue the obligation of the Board to see that competition exists and adds the further responsibility that the Board must satisfy itself that it is actual and compelling.

Now comes the matter we were discussing, the amendment of Section 332.

THE CHAIRMAN: You say the Board must satisfy itself that there is actual competition, compelling competition.

MR. FRAWLEY: Yes.

THE CHAIRMAN: You have a draft then.

MR. FRAWLEY: Right now, sir.

Amendment of Section 332.

Section 332 of the present Act deals with the filing of competitive tariffs. We suggest no changes in this Section

I have been thinking of you a great deal lately, and wondering how you are getting on. I hope you are well and happy. I have been very busy lately, but I always find time to think of my friends.

With much love,
Your affectionate friend,
John Doe

I have been thinking of you a great deal lately, and wondering how you are getting on. I hope you are well and happy. I have been very busy lately, but I always find time to think of my friends.

I have been thinking of you a great deal lately, and wondering how you are getting on. I hope you are well and happy. I have been very busy lately, but I always find time to think of my friends.

I have been thinking of you a great deal lately, and wondering how you are getting on. I hope you are well and happy. I have been very busy lately, but I always find time to think of my friends.

but propose the addition of a subsection (2) which will further enlarge the Boards's responsibilities regarding competitive rates. (See Transcript p.20014). As a matter of fact, when I put in my amendment at page 20014 of Volume 104 I reproduced the whole of 332, but I may say I have simply repeated -- just simply copied the present 332 so I need not read that. Now, the section which I have added -- it is a straight addition -- reads this way:

Section 332 Revised

- (2) It shall be the duty of the Board to maintain such continuous examination of the competitive tariffs as to satisfy itself that the competitive tolls are no lower than necessary to meet actual and compelling competition and that such tolls more than cover the additional costs of the movement to which they apply.

THE CHAIRMAN: Is this all that you leave to the Board, what you have just read?

MR. FRAWLEY: Yes, in 332.

THE CHAIRMAN: Then you have eliminated the section which says that the Board is to determine what points are competitive.

MR. FRAWLEY: Yes, my lord. It is because of the wording: it is tied up to long and short haul, sir, and we do not think it should be tied up to long and short haul.

THE CHAIRMAN: Then you leave the filing of these competitive tariffs as it is.

MR. FRAWLEY: Just as they are, sir.

THE CHAIRMAN: Because some others say the Board should first approve.

MR. FRAWLEY: Yes, my lord. We do not say that. We specifically keep away from that. We do not adopt that suggestion.

COMMISSIONER INNIS: Isn't that putting a pretty heavy burden on the Board?

MR. FRAWLEY: Well, there is something which explains just how heavy the burden will be in my submission, sir.

THE CHAIRMAN: Do I understand the machinery will be this, that henceforth the railways will continue as they are doing today, to file competitive tariffs?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: And that the Board's function will consist in keeping a constant examination before them of all these competitive tariffs after they are filed and in operation?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: To see when they should be discontinued?

MR. FRAWLEY: That is right; it is something that we say is not there now. We think it is quite important that there should be a continuous examination after the rates have been filed. Of course perhaps I should say that the long and short haul is something else. We do have a prior application in connection with long and short haul competitive rates that create long and short haul discrimination, but I am coming to that.

COMMISSIONER INNIS: Suppose the rate is just low enough to keep competition in check, keep it out? Is that actual and compelling?

MR. FRAWLEY: You can go there at once to page H-6. I think probably I should have gone there in the first place.

THE CHAIRMAN: It is the competition that must be actual and compelling.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Not the rate, the competition.

MR. FRAWLEY: The competition must be actual and compelling. If I say it twice it won't be too many times.

You will find what we say if you will turn to page H-6. Dr. Innis has asked me about the meaning we are going to give to "actual and compelling". I said a moment ago I would come to it. I think I might as well come to it now.

THE CHAIRMAN: Where is it?

MR. FRAWLEY: H-6. This is what we say about the words "actual and compelling".

"The phrase 'actual and compelling competition' as used by Alberta in its submission, refers to a competitive situation which is real and not imaginary. Actual competition exists when there is a competitive movement or when there is a reasonable likelihood of such movement if an adjustment in rates is not made to forestall it."

Mr. Harries also said:

"It is not the intention of Alberta to propose a stricter rule than that applicable in the United States, nor on the other hand to approve language which would permit long and short haul discrimination that rests on purely fanciful claims of competition that might conceivably exist in the future".

As to your question about this, the explanation was given in the section dealing with the long and short haul but we must do precisely the same because we use the same expression, "actual and compelling".

COMMISSIONER ANGUS: Do you distinguish between "meeting" competition and "forestalling" competition?

MR. FRAWLEY: Well, I think not, sir. I will stand on what is said there.

"Actual competition exists when there is a competitive movement"--

That is one.

"--or when there is a reasonable likelihood of

"such movement if an adjustment in rates is not made to forestall it".

COMMISSIONER ANGUS: As I see it there are three different things. One is to meet competition: that is charging the same rate as is being charged by somebody else.

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: The second is to forestall it by putting in such a low rate that the competition will never arise, and the third is to try to eliminate it by putting in such a low rate that the competitor cannot compete. Does your word "meet" in this section say exactly what you want it to say?

MR. FRAWLEY: May I just consult? My attention is called to the concluding phrase in subsection 2 of 332, if you will be good enough to look at that.

THE CHAIRMAN: As it is now?

MR. FRAWLEY: No, on page G-6, my addition to 332, my subsection. There you will see that the Board must see that the competitive tolls are no lower than necessary to meet actual and compelling competition, and that such tolls more than cover the additional costs of the movement to which they apply.

So long as they do that, sir, then whether they are low enough to destroy it or low enough to forestall it or just to meet it in my respectful submission does not matter.

COMMISSIONER ANGUS: As long as they are compensatory they may be designed to eliminate competition by going below it?

MR. FRAWLEY: I would have to say yes, that is right, sir.

COMMISSIONER INNIS: Then your whole point is covered simply by the part beginning, "and that such tolls more than cover the additional costs". You could leave out "that the competitive tolls are no lower than necessary to meet actual and compelling competition".

MR. FRAWLEY: Well, they might be unnecessary later, sir. I think there should be some supervision by the Board to see that they are not unnecessary later.

THE CHAIRMAN: Once they are compensatory you think even that is not enough. They may not be sufficiently compensatory.

MR. FRAWLEY: If they were compensatory and the Board thought they could get more revenue and still maintain their proper share of the traffic then from the standpoint of getting more revenue the Board should have some function to require them to get more revenue if it were there, but that is a situation that I do not think --

THE CHAIRMAN: Wouldn't the railway be alive to get all the revenue it could?

MR. FRAWLEY: That is what I was going to say.

THE CHAIRMAN: The point raised by Dr. Innis is a very live one. You say two things. You say the Board must be satisfied that the competitive tolls are no lower than necessary to meet actual and compelling competition. That is one thing. Then you go on and say:

"-- and that such tolls more than cover the additional costs of the movement to which they apply". That is the second thing. You would have the Board keep a constant supervision over both.

MR. FRAWLEY: I think the two must be read together, sir. I do not think they are completely exclusive.

COMMISSIONER ANGUS: Here is an example. Suppose that a competitor is charging 10 cents. The lowest rate that would be compensatory is 7 cents. The competitive rate that is put in is 10 cents. That is no lower than is necessary to meet competition. Suppose a rate of 8 cents is put in. That is still compensatory but is it lower than is necessary to meet competition? It may be said it is put in there to

eliminate competition, not to get a fair share of the traffic but to get all the traffic. Is your language designed to impose a duty on the Board to look into that sort of situation?

MR. FRAWLEY: I think I would say that, yes, sir; I think the Board should study that. They should be aware there is a rate there of just the kind you have described. It might be 10 cents and then they have gone to 8. I think they have an obligation to be aware of all these circumstances.

COMMISSIONER ANGUS: But if the 8 cent rate is lower than is necessary to meet competition it is designed to eliminate competition, and does that mean they must disallow it or can they tolerate it?

MR. FRAWLEY: It seems to me that the railways must be given latitude there.

THE CHAIRMAN: I think you told us a while ago that you did not care whether a rate eliminated or met competition so long as it was compensatory. You told us that?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Are you rejecting that now?

MR. FRAWLEY: There is an over-all desire on our part to see that as much revenue is received from competitive rates as possible, and I must say that there would be a duty on the Board to see whether or not that revenue was earned, whether revenue might be received which was not. I agree with what your lordship said that it would not be a very practical thing -

THE CHAIRMAN: If you leave your language as it is you compel the Board to do this. You say it shall be the duty of the Board, to see that competitive rates are no lower than necessary to meet actual -- you use the word "meet" -- and compelling competition. You would compel the Board to see that the railways were not doing any more than actually meeting competition, whatever that may mean. You would have to define

it, I think. Then again you add:

"-- and that such tolls more than cover the additional costs of the movement to which they apply".

It seems to me according to the way in which you first expressed your intention that competition would be met if you simply said that the Board shall see to it that these rates shall in every case cover additional costs of the movement to which they applied. Is that what you want? You see by the draft you want two things.

MR. FRAWLEY: Yes, because I thought that the one dovetailed into the other.

THE CHAIRMAN: They are different. In a given case, as Dr. Angus has put it, the rate fixed by the railway may cover the additional costs of that movement and still be lower than necessary to meet competition.

MR. FRAWLEY: That is right, and if it were, my lord, then I think that the Board has a further responsibility to see that that revenue which has been lost, obviously, is received.

COMMISSIONER INNIS: Are you not assuming that the railways are unusually stupid?

MR. FRAWLEY: I think the stupidity varies. I think in some places they use competitive strength more aggressively than in other places.

THE CHAIRMAN: Are you abandoning the position you first took, perhaps too hurriedly? You first said you were quite willing to have the railways fix rates low enough to eliminate competition. Are you changing your attitude there now?

MR. FRAWLEY: So long as that rate more than covered the additional costs of the movement to which it applied I should not.

THE CHAIRMAN: Then you are not changing your section? Your section says two things, not only that it should cover additional costs but that it is not lower than necessary to meet actual competition. You see it might cover the additional costs but still be so low as to eliminate all competition, more than needed. Then according to your present draft the Board would have to disallow it.

MR. FRAWLEY: If there was such a situation, and by increasing that rate the traffic could be held then I would think the rate should be increased.

THE CHAIRMAN: Then you are not in favour of elimination. That is, you are against tariffs so low that they will eliminate competition? It is one or the other.

MR. FRAWLEY: I quite agree it is my problem, and it is certainly a very complex sort of thing. You have to try to reconcile the two.

THE CHAIRMAN: You may want to look into it and let us know.

COMMISSIONER INNIS: Is there not another problem, that of placing a heavy responsibility on the Board in the matter of looking into the prospects of competition from other sources? I do not mean that you would necessarily be adding unduly to the burdens of the Board but you could ask whether water competition or truck competition is apt to develop with such and such a rate. It seems to me they would have to take that into account.

MR. FRAWLEY: I think probably the Board's inquiries and the Board's supervision should not stop short of that. I think they must examine into all these things, and I think they are not doing that now.

COMMISSIONER INNIS: I would agree.

MR. FRAWLEY: When you say "burden", at the moment with every respect to the Board I think they are doing little or nothing about competitive rates.

THE CHAIRMAN: In any event, I think you will agree that this is in the amendment, but the principles of the act must clarify and not obscure.

MR. FRAWLEY: Yes, my lord.

(Page 21960 follows)

At the present time the Board is concerned with competitive rates only at the time of the filing of the rate. As we pointed out at page 11152 of volume 58, the Board's tariff circular no. 1, rule 17 (1) provides for certain information to be furnished the Board along with the filing advice. Generally speaking, this is the extent of the Board's interest in competitive rates, unless a complaint of unjust discrimination is raised. This is an inadequate procedure to deal with the many questions related to competitive rates that arise after the rates have been put in effect. Our new subsection (2) of section 332 confers a continuing responsibility on the Board,--a responsibility which it can now be said to possess only by implication from the very broad general powers conferred upon it in the Act, but which the Board itself has almost consistently disavowed in its particular judgments.

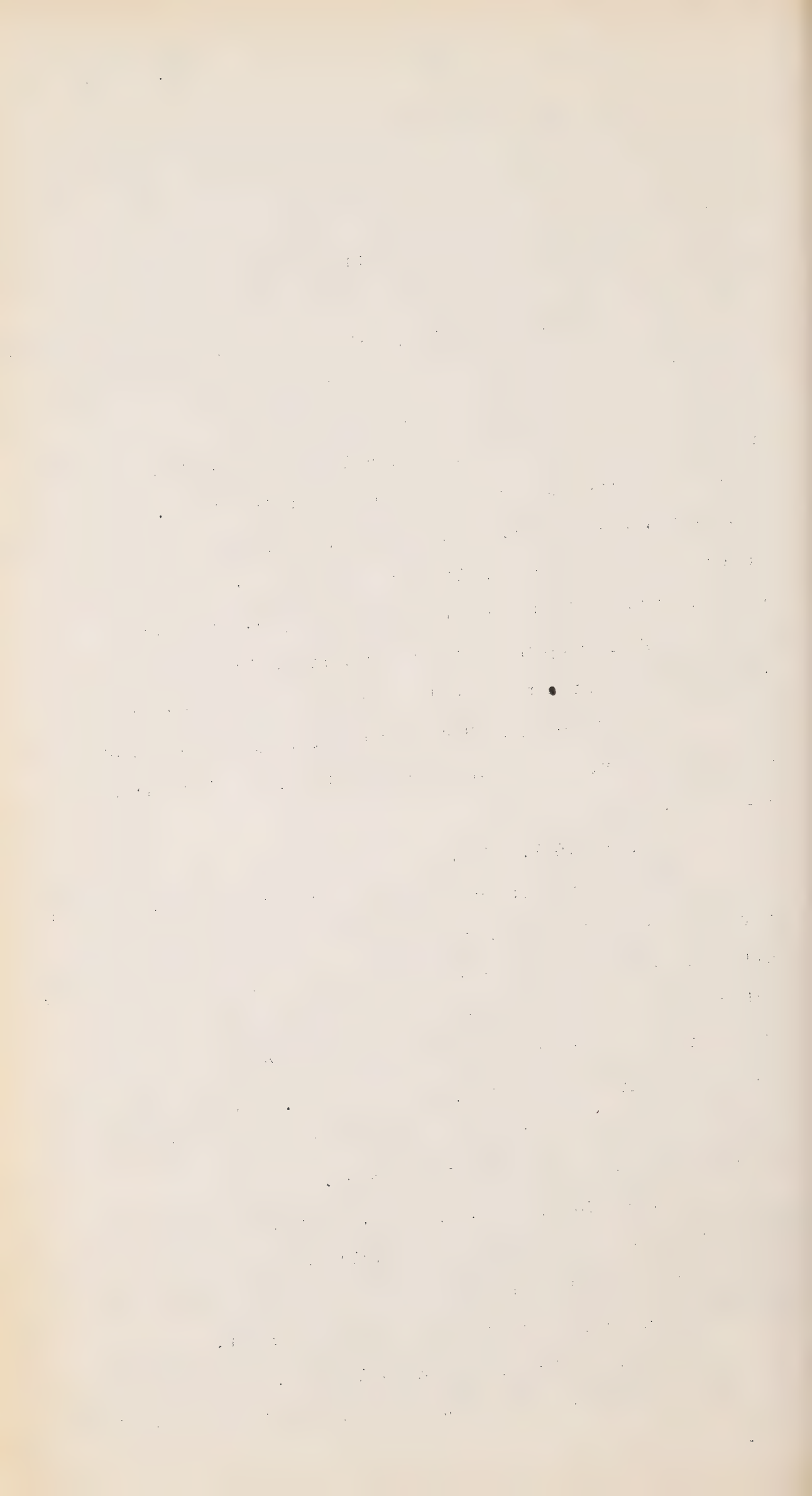
THE CHAIRMAN: Before you get to your amendment, you told us a moment ago about evidence given, for instance, by Mr. Coyne.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Has the Board itself, either personally or through its officials, dealt with the question as to its ability to control these rates in the way you suggest? I mean, having regard to the time required and the amount of study required? The continuous examination which ^{you} would impose upon them might be excessive. I do not know. What has the Board said about that, or has it said anything? Has it said anything, to your knowledge? You have been there.

MR. FRAWLEY: Yes, my lord. I rely upon what the Board said in the last judgment in which they talked about the right of the railway to put in rates to meet competition or to leave the competition alone as they saw fit.

THE CHAIRMAN: What I mean is this. You would impose upon the Board a new duty in respect of these competitive rates.



MR. FRAWLEY: Yes.

THE CHAIRMAN: Is the accomplishment of the duty physically possible?

MR. FRAWLEY: I certainly think it is. It may not be with the present staff. This may be putting duties upon them which they may not be able to discharge with the staff they have. That raises the same large question as to whether or not there is --

THE CHAIRMAN: Have we not been told that there are very many of these rates and that they are changed from time to time? Notwithstanding all that, you think it is competent to the Board to carry on this constant supervision, as to the elimination of increases and so on?

MR. FRAWLEY: Yes, my lord; and I have gone the length of suggesting that each competitive rate get prior approval.

THE CHAIRMAN: Which means in each case examination as to what the competition is and whether the present rate meets it or does not meet it or whether it goes too far and extinguishes it. I should like to know if you have considered that,

MR. FRAWLEY: Yes, my lord. There is something in here on it. Perhaps when I have said all I have to say, it may become more clear. I have two or three more pages on competitive rates.

THE CHAIRMAN: All right.

MR. FRAWLEY: I might stop long enough to say that ^{as} you will recall, Mr. Coyne said that the Board certainly did not do this "deeming and declaring", which your lordship called to my attention a few moments ago - deem or declare that these two points were competitive points and so on. Mr. Coyne said, "We just did not do that." Whether Mr. Frawley is right or wrong about it, he did not say. But the Board does not do that.

The provision in our new sub-section (2) of section 332 which reads as follows:

"to satisfy itself that ^{the} competitive tolls are no lower than necessary to ^{meet} actual and compelling competition"--

THE CHAIRMAN: You stop at "meet", not to extinguish or eliminate. You say that you would provide that the Board must satisfy itself that the competitive tolls are no lower than necessary to meet actual and compelling competition.

MR. FRAWLEY: Your lordship will see that I go on to explain that. That is, as I quoted those words, I immediately follow that --

THE CHAIRMAN: Pardon me a moment, you are just quoting part of what you have already been reading. All right, go on.

MR. FRAWLEY: Very well.

The purpose of those words is to direct the Board to see that the competitive rates are kept up to date and responsive to changing conditions. The railways draw their revenues from wide areas geographically. Some of these areas are areas of intense competition from other transportation agencies. Consequently there is always a possibility that the railways may keep competitive rates lower than necessary especially during periods of rising costs--recouping themselves out of non-competitive traffic.

I do not envisage, nor does our amendment require, any minute and daily examination of each and every competitive rate. I refer to the transcript at page 11544, volume 60.

THE CHAIRMAN: Yes. But you have got to be careful. The courts later on will not read the Act in the light of what you have said here. They will read the Act as it is. You say

"continuous examination of".

MR. FRAWLEY: Yes, continuous examination of competitive rates in general. If there is to be any examination, I think one could use only the word "continuous". That is the difficulty. If you just had a sporadic and periodic examination, that would not suffice, in my respectful submission.

The amendment requires only that the Board remain in closest touch with the competitive situation; and by that I mean the competitive situation generally.

Through its knowledge of general conditions and of railway operating and traffic conditions, supplemented by sampling or by the testing of particular competitive rates, the Board must satisfy itself that competitive rates do not transgress the requirements of the sub-section.

THE CHAIRMAN: You are saying there in a general way "competitive rates". In reality do you not mean each single separate competitive rate? Because you cannot classify them all and say, "The Board must say that generally the competitive rates - and there may be many hundreds of them; I do not know - do not transgress the requirements of the sub-section." Do you mean that, or do you not mean rather, by the wording of your amendment, that each separate competitive rate must be under constant supervision to make sure that it complies with certain conditions?

MR. FRAWLEY: Yes.

THE CHAIRMAN: That it is not lower than necessary to meet competition and that it more than covers the cost.

MR. FRAWLEY: It is really the principles which are laid down.

THE CHAIRMAN: Some rates may and some may not.

MR. FRAWLEY: That is right. It is really the

which

principles are I laid down. The actual working out of the day-to-day proceedings would fall to the Board in the matter of making some regulations, making some rules of form, something that

would keep the Board in touch with the competitive situation, which it is not now, in my submission, which appears from their whole attitude. They say, justifiably in their own minds, that they are not much concerned about it. This would seek to make them more concerned; but I would hope not to impose a task upon them which they could not discharge.

THE CHAIRMAN: If your language is adopted, Parliament would be imposing a task upon them which would be pretty hard to fulfill.

MR. FRAWLEY: Your lordship was looking closely at section 320 and 329 (4), the one that I discussed with Mr. Coyne. Parliament has now said to this Board that they must deem or declare a point or points to be competitive points not subject to the long haul rate.

THE CHAIRMAN: That is what it says.

MR. FRAWLEY: That is in connection with every competitive rate. As I recall it, Mr. Coyne said, "We are not doing that." He does not say whether they are right or wrong in not doing it.

THE CHAIRMAN: Surely you do not want us to put into the statute anything that you do not expect them to do.

MR. FRAWLEY: That is quite right. That is why I want to eliminate that. They are not doing that. So let us take it out all together.

THE CHAIRMAN: You are putting in something else.
-- and
You go on and say/here again you compromise--you must not
take the language here/^{as being}as stringent as it is expressed. I am pointing out that your language is very stringent, because it would make it so that the Board would have to take each competitive rate and make sure at all times it covers its cost and is no lower than necessary to meet the actual competition. It might vary from week to week. The truckers may bring their rates down or/^{put}their rates up. I do not know what may happen,

especially where in a great part of the country those rates are not controlled by anybody.

MR. FRAWLEY: But, my lord, if you begin with the proposition that there should be some kind of supervision by the Board, some consideration, on the assumption there is none at all now, you would have to use the word "continuous". I do not think it is a frightening word, with all respect. It must be "continuous" because if you use any other word, the thing would defeat itself.

THE CHAIRMAN: Yes, I know. I quite agree that it is possible to establish a continuous review and examination of competitive rates; but that depends on how far you wish the Board to go, or how far you would compel the Board to go. You would compel them in every case to satisfy themselves that the tolls are no lower than necessary to meet actual competition and I suggest that "actual" this week may be very different from "actual" next week.

MR. FRAWLEY: Yes, my lord. But we have defined that.

THE CHAIRMAN: ^{You say,} "to meet actual and compelling competition".

MR. FRAWLEY: We have defined that phrase in our submission, ^{as meaning} that it is competition that is either there now or where there is a reasonable likelihood of its being there.

THE CHAIRMAN: But it may not continue to be the same competition.

MR. FRAWLEY: I quite agree.

THE CHAIRMAN: These uncontrolled rates may go up or down; and then you would have the Board following all the time to see if there is a margin between the railway and the trucker?

MR. FRAWLEY: That is true. It might be truck competition one day and water competition another day. It is

not an easy task, my lord.

THE CHAIRMAN: Truck competition itself might vary greatly.

MR. FRAWLEY: That is right.

THE CHAIRMAN: It is uncontrolled in large areas.

MR. FRAWLEY: I am sure, my lord, that it is not necessary for me to impress the Commissioners with the importance of this matter. The importance of it ^{comes} from what I said on Friday, about the crisis that has been reached. There must not be a continuation of competitive rates at the expense of the non-competitive area. Something must be done.

THE CHAIRMAN: It may be so important that competitive rates should be disallowed entirely. I do not know.

MR. FRAWLEY: No.

THE CHAIRMAN: But if you are going to set up machinery for allowing them to be created, and then to control them, it must be reasonable machinery.

MR. FRAWLEY: That is quite so; it must be reasonable. I must not advance anything that is not reasonable; and I do not think that I am advancing anything that is not reasonable. I certainly hope I am not.

THE CHAIRMAN: You are not in your language, when you speak to us. But what I am concerned about is with the meaning of your amendment.

MR. FRAWLEY: That is true. Your lordship has had years of experience with statutes.

THE CHAIRMAN: I am pointing out that you cannot say in your amendment "the Board must do this" and then tell us that it does not mean that.

MR. FRAWLEY: You are quite right, my lord. The Courts afterwards would not care one straw what I said when I was making my submission here. It is what Parliament would say in the statute that would govern. That is quite right.

COMMISSIONER ANGUS: Mr. Frawley, I think since you prepared your original brief, we have had evidence from Mr. Fairweather that it is possible to satisfy yourself that truck competitive rates are always compensatory because they apply only to high value traffic and the rates imposed must always be above the system average. Do you disagree with that evidence?

MR. FRAWLEY: No. It is not that I disagree with it. But I do not know how long that situation may continue. Mr. Fairweather said, "We are unable to use our competitive strength." That is one of the things Mr. Fairweather said that impressed me. It seemed to suggest, "If we could go after the highway competition we could really eliminate it. But we cannot do that. We would have to do it at the expense of other sections of the railway and we cannot do it."

COMMISSIONER ANGUS: He may have said that. But as I understood him, he could do it without charging rates which were individually ^{non} compensatory. He said these are rates such ^{that} we could still cover our costs and go right under the trucks on distances over 100 miles and that sort of thing. There is nothing in your amendment, as you interpreted it, that would stop that.

MR. FRAWLEY: No; if it ^{is} compensatory.

COMMISSIONER ANGUS: If that is all the Board has to do in connection with truck competitive rates, satisfy themselves that they are not below the compensatory level and in view of Mr. Fairweather, with his experience, saying they must all be above that, then that is a duty that is very easily performed without a very expensive staff.

(page 21970 follows)

MR FRAWLEY: I certainly did not think that this was going to impose an impossible duty upon the Board.

COMMISSIONER ANGUS: I am suggesting it is imposing an extremely easy one. Mr. Frawley, could you give us an idea of the amount of money that is at stake in this matter? I mean, how great is the thrust, in your opinion, on non-competitive rates that results from competitive rates :not being supervised by the Board in the way you suggest? Is it appreciable? Is it one per cent, two per cent, ten per cent of the non-competitive rates?

MR FRAWLEY: Oh, well, I think, sir, that it is impossible to estimate.

COMMISSIONER ANGUS: Well, is it in your opinion substantial?

MR FRAWLEY: Well, you see, when we try to find a rate which is non-compensatory, there are no studies, there is nothing to indicate how many of these rates are compensatory or otherwise.

COMMISSIONER ANGUS: Except Mr. Fairweather's evidence. My point is this: If the amount in issue is not substantial, is a mere theoretical possibility that there may be a loss at that point something that justifies administrative machinery of the character proposed?

MR FRAWLEY: Oh, well, we think certainly that it is an important matter, sir. I could never agree that it is not an important matter, because there is a feeling in the non-competitive area that there is too much latitude in the making of these rates, and that they are doing it at the expense of the non-competitive area.

COMMISSIONER ANGUS: Well, how much is the expense? I am told that the competitive rates in the

aggregate amount to \$35 million on the Canadian Pacific.

MR FRAWLEY: Yes, that is it.

COMMISSIONER ANGUS: And 16 per cent of the freight on the other. Now, you are dealing with a very small revision of these rates upwards if they are too low -- and there was not very much about that -- and with their complete abolition if they are not compensatory, so that the railways will lose the traffic altogether. Now, what effect would those changes have on the net earnings of the railway? Would that be a substantial affair?

MR FRAWLEY: Well, I do not know, sir. What impresses me is the implication contained in the fact that they are not now able, as things are at the present, to make any further increases in competitive rates. There is one now; there will be a very good---

THE CHAIRMAN: You say they are not now able to make any further increases.

MR FRAWLEY: In competitive rates.

THE CHAIRMAN: In that they would lose the traffic if they did.

MR FRAWLEY: I suppose that is the reason, sir. There is a matter pending now. The Board has been asked to increase the last judgment by 4 per cent. Now, from all the evidence that was presented to the Board, I will say to the Commission -- of course, I am subject to correction, but I will say to the Commission -- that if another 4 per cent is granted by the Board -- within a matter of days now the judgment will be coming down, I imagine -- I say to the Commission that no part of that extra 4 per cent will be put on competitive rates.

COMMISSIONER ANGUS: As I understand it, Mr. Frawley, it means that the railways say, "We cannot increase our net revenues by raising our truck competitive

rates." Now you say they can increase their net revenues by raising their truck competitive rates. My question is, how much? What is the order of magnitude? I do not want an exact estimate, but is the difference there a theoretical one, or is it a big practical difference between your estimate and the railways' estimate?

MR FRAWLEY: Well, Dr. Angus, it is impossible for me to give you any precise answer, or of course I would immediately. But I do think that the importance of it dollarwise surely becomes evident when you pursue the 4 per cent I am just speaking of and that should become 20 per cent. Now, without saying again what I said before -- but it is germane to the point, dollarwise, the importance of it -- suppose that out of the new wage bill that is being presented to the Government of Canada, to the railways and to the Government of Canada, there should come a 20 per cent increase (and I think that is probably not too large a figure), and if none of that could go on the competitive traffic, and still the money had to be realized, the millions of dollars had to be realized, because it is an order of the Board, then that would have to come from non-competitive traffic.

COMMISSIONER ANGUS: As I understand it, Mr. Frawley, you do not really want it to go on the competitive traffic. What you are saying is this, as I understand it, that it is not very important that the railway may charge too little; what is important is that its rate must be compensatory. Now, if the permission is given to increase, and the effect of an increase would be to bump against this compensatory level, what you want is that the railways should forego the traffic altogether rather than sustain a loss on it.

MR FRAWLEY: No.

COMMISSIONER ANGUS: Well, that is the effect of the compensatory side of your argument.

MR FRAWLEY: We say that it is no lower than necessary to meet---

COMMISSIONER ANGUS: No lower than necessary to meet competition.

MR FRAWLEY: To meet competition.

COMMISSIONER ANGUS: But I understood a few minutes ago that you thought that was much the less important of the two rules, that you were very much frightened of the railways losing revenue by charging very low rates, and when I gave you the example of the ten cents and the eight cents you seemed to say that did not matter, as long as the rate was compensatory.

MR FRAWLEY: Oh, no. I must say to that, sir, that if it could be demonstrated to the supervising Board that eight cents would be as good, as far as holding the traffic is concerned, as seven cents, it should be eight, in fairness to the non-competitive area; surely it should be eight -- thinking of revenue, sir. I certainly would not be content that it should remain at seven.

THE CHAIRMAN: Why would the railway, if it can earn eight, confine itself to earning seven?

MR FRAWLEY: Oh, I do not think they would, sir; but I was answering Dr. Angus' question, which may be a real circumstance.

THE CHAIRMAN: But you must think they are doing that today; you apparently do think that they are doing that today.

MR FRAWLEY: I think there is a danger of it, sir; I must say that; otherwise, wherein lies the problem?

THE CHAIRMAN: Generally speaking, must not that underlie your complaint and your seeking for amendments?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: You have a feeling today that the railways might make more money in these competitive areas than they are now making; that is, they might increase these rates and still get the traffic. Isn't that what you are saying?

MR FRAWLEY: That is right; and I want to have somebody there, some third party in addition to the railways, to see that they do.

THE CHAIRMAN: Then I would say in the first place, if the railways might make more money in these competitive areas, why don't they do it -- I mean, without losing the traffic -- not only make more money on wheat but on everything -- then they might carry on and make more money continually. Why don't they do it?

MR FRAWLEY: I am not charging that they do not.

THE CHAIRMAN: Yes, you are. You want to make sure by law that their rates shall not be lower than necessary to meet competition.

MR FRAWLEY: Well, my lord, we have gone through a series of rate cases where we have examined the degree of burden placed upon the competitive and the non-competitive traffic. Those are the things that are alarming to us, because we feel that we are the people who can always take the increase, and that the competitive rates do not. So I am concerned with two reasons, two situations. First, I want the competitive rates to be as high and as remunerative as they can, but now I have a new, fresh concern, and a very serious one, that, because of situations over which the railways have no control, those competitive rates have now reached the point where the railways cannot increase them, and it may be so.

THE CHAIRMAN: And then what?

MR FRAWLEY: Then they have an order, they have a rate increase, they have an order to go and get \$25 million. That is the effect of the order -- "Go and get \$25 million." They cannot get any part of it from the competitive rates -- I mean, if you assume that with me, sir. Then we pay all of it.

THE CHAIRMAN: Then what would you do now? We are talking of competitive rates. What would you do to meet that crisis?

MR FRAWLEY: We may not be able to meet that crisis, sir, but we do want the Board there to see that there is a crisis, to be there intelligently supervising that thing, and then, after the railways have said, "Well now, we have supervised it, we have kept as close, continuous watch on it as we can," to say, "We are satisfied that the railways are doing all they can. They cannot increase these competitive rates any more." Then I say that is the stage that has been reached that is a very serious matter for Western Canada.

THE CHAIRMAN: Then what?

MR FRAWLEY: Then, as I have submitted to this Commission, Parliament must come in.

THE CHAIRMAN: That is where your subsidy comes in.

MR FRAWLEY: It is called a subsidy. I am not shy about calling it a subsidy. It is really aid to the railways to recompense them for circumstances over which they have no control. I want to make that quite clear, my lord, that it is not a subsidy in the ordinary sense of the word. These railways must go to Parliament rather than go to Western Canada to get their further increase in rates.

THE CHAIRMAN: I think we are concerned just now with the practical working out by the Board of what you make it their duty to do under the amendments---

MR FRAWLEY: That is right, sir; and it is exceedingly difficult to envisage every consequence of giving the Board these extra statutory obligations. It would not be fair for me to say that it is just a simple thing; but something must be done, sir.

THE CHAIRMAN: I see; but your statute -- I mean, there you have it: You say it shall be the duty of the Board to maintain such continuous examination of the competitive tariffs, each one of them, as to satisfy itself that these competitive tolls, first, are no lower than necessary to meet actual and compelling competition.

MR FRAWLEY: I think that is fair.

THE CHAIRMAN: That is one instance; and, secondly, that such tolls more than cover the additional cost of the movement to which they apply.

MR FRAWLEY: Well, to see that they are reasonably compensatory. It seems to me that those are not too difficult.

THE CHAIRMAN: The Board must see that these tolls exactly meet competition.

MR FRAWLEY: Well, that they are no lower than necessary to meet, sir.

THE CHAIRMAN: That they must not eliminate it. They might make a lot more money by eliminating it, but you say no.

MR FRAWLEY: There may be occasional circumstances where if they were eliminated---

THE CHAIRMAN: Well, we cannot have occasional circumstances coming into an Act that does not provide for them. You are saying you are not providing for exceptional circumstances at all. You say that each one of these tolls must be kept by the Board no lower than necessary to meet actual and compelling competition. You say that.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: You stand by that?

MR FRAWLEY: Well, your lordship suggested a moment ago that I might reconsider it. I am not endeavouring to minimize the difficulty. It is an exceedingly difficult matter. I am trying to do something, sir, that never has been done before. We have just had laissez faire for forty years, and now I am endeavouring to impose some duties on the Board, and of course it is difficult, but I think we can work something out. I think we can bring about the objective I see, and that suitable language can be contrived. I am certainly concerned with the principle, but if I just had the principle and did not have the courage to put it in a statute it would be reasonably easy; but I put it in the statute, and of course I have got to justify my words.

THE CHAIRMAN: Well, I think there is a great margin of difference between what you tell us you want and what you put in the statute.

MR FRAWLEY: There must not be, my lord; I quite agree, there must not be, so I endeavour to see if I can get the argument that I have put to you, to see that the words I have used will coincide.

COMMISSIONER ANGUS: Mr. Frawley, I hope our Canadian Pacific friends will excuse me for using blunt language, but as I understand it you say that the yardstick railway has \$35 million worth of competitive traffic, and that they are so inefficiently managed that they lose a lot of money by charging too high rates on part of it and too low rates on another part -- that is to say, that the rates are on part so low that they are not compensatory and the traffic is being carried at a loss and in other cases it is a question of meeting competition. Now, are you

really suggesting that there is a sufficient danger of incompetent management as to argue that the Board ought to protect that railway against itself by taking these measures, seeing that it does not lose money by making its rates lower than necessary to meet competition, and that it does not lose money by making its rates so low that it carries traffic at a loss?

MR FRAWLEY: Well, of course, I do not say that the Canadian Pacific is inefficiently managed at all, sir. I say it not at all, in any sense or degree. I think it is a most efficiently managed railway, of course, but I say that they have reached a stage now where, due to the intensity of this competition, the efficiency of the motor highway transport in Eastern Canada, . . . they cannot get any more money out of that area. Now, to say that they are coming to my area to get it -- well, that is inevitable; that is just the necessary consequence.

THE CHAIRMAN: Now you are on totally different ground.

MR FRAWLEY: Oh, yes.

(Recess)

MR FRAWLEY: Continuing, my lord, on page G-9:

Had such a duty originally been placed upon the Board by the Railway Act, many of the anomalies in the rate structure which have been presented to this Commission would undoubtedly have been disposed of - either at the time of the General Rate Investigation in 1927 or even earlier. At that time the lower levels of many rates, for example, the Eastern standard class rates and the Town Tariffs, were successfully defended by the railways, merely by reference to their competitive origin, and left intact

by the Board. The mere mention of competition appeared to be sufficient to tie the Board's hands. Thus, in the 21% Case Judgment of 1948 (38 J.O.R. & R. 1) we find the Board relying upon statements about competition in Eastern Canada made in the Western Rates Case 1914 (p. 51 of separately printed judgment). However, this prop that the Board relied upon as recently as April 1948 was suddenly removed by the railways in July of the same year, when they announced their intention to equalize class and commodity mileage rates - a step which the Board had rejected on previous occasions because of the alleged force of competitive conditions in Eastern Canada.

THE CHAIRMAN: Please tell me this: What competitive conditions in Eastern Canada were advanced in 1914? Were they trucks?

MR FRAWLEY: The American railroads principally, sir.

The recent general increases applied for by the railways have also illustrated the need---

THE CHAIRMAN: Pardon me a moment. Does that competition exist still today in any way?

MR FRAWLEY: The American rates now, sir, have gone above the Canadian rate level, and that seems to have effectively eliminated that.

MR EVANS: Water competition too, largely.

MR FRAWLEY: The recent general increases applied for by the railways have also illustrated the need for the Board giving closer attention to competitive rate levels, rather than leaving competitive rate levels solely at the discretion of the railways. Much has been said by the railways of the extent to which competitive rates have been increased in recent years. What is the situation? Non-competitive rates have received successive increases of

21% and then 16%. Competitive rates have received general increases of 21% and 15%. Specific competitive rates have received both more and less than these general increases, while a number have been cancelled. Nevertheless, the great bulk of competitive rates have received approximately the same percentage increases as non-competitive rates. We must remember that before the recent increases competitive rates were considerably lower than non-competitive rates. The over-all effect of the percentage increases has been at best to maintain the relative differences between the two classes of rates. The gap between competitive and non-competitive rates has not been closed by the increases of the last two years. If anything, it is wider. (See Exhibit 208) There is a fundamental need to maintain a proper relationship between competitive and non-competitive rates. This should be a clear responsibility of the Board. Our amendment endeavours to assure that.

THE CHAIRMAN: How could the gap between competitive and non-competitive rates be closed?

MR FRAWLEY: How could it be closed?

THE CHAIRMAN: You say the gap between competitive and non-competitive rates has not been closed.

MR FRAWLEY: Has not been closed, no, my lord.

THE CHAIRMAN: Well, how could it be closed?

MR FRAWLEY: Well, it could not be closed unless the competitive rates were very materially increased.

THE CHAIRMAN: Yes, but you seem to complain because it is not closed. You say the gap between competitive and non-competitive rates has not been closed.

MR FRAWLEY: Yes, my lord. All I can say to that is that we want to be assured by this supervision by the Board that the gap is not any larger than it should be.

COMMISSIONER INNIS: You really mean narrowed, not closed.

THE CHAIRMAN: You mean narrowed, I guess, don't you, when you say closed?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Because once you close the gap there are no competitive rates.

MR FRAWLEY: Now I pass, my lord, to a discussion of the long and short haul rule. I have set out at the beginning of this statement, at the top of page H-1, the references in the transcript to the text of the brief, to the evidence in chief and to the cross-examination, and also to the amendment to the Railway Act, which is found at page 20007 of volume 108.

The text of the brief is to be found at Volume 61, p. 11709 to 11871.

The Evidence-in-Chief:

Harries, Vol. 60, p. 11640 to 11651

Vol. 61, p. 11875 to 11975

Vol. 61, p. 12036 to 12052 and

Locklin, Vol. 61, p. 11980 to 12036

Cross-examination:

Harries, Vol. 62, p. 12056 to 13082 and

Locklin, Vol. 62, p. 13082 to 13113

Vol. 63, p. 13114 to 13195

Amendment to the Railway Act:

Vol. 108, p. 20007

Long and short haul discrimination is without doubt the most extreme form of locality discrimination. In Alberta we look upon it as the most obnoxious discrimination in the freight rate structure, because of its effect upon trans-continental traffic.

The discrimination which results from the trans-

continental competitive commodity rate structure is shown by Exhibit No. 137.

Exhibit 137 was put into the record at page 11962 of volume 61, and that is the large exhibit which is a complete analysis of these long and short haul discriminations, but at page 11767 of volume 61 there appears a table called Table 2, which is a condensed summary of Exhibit 137.

This Exhibit 137 indicates the extent of the violations which occur in those tolls at Calgary and Edmonton - from 650 to 750 miles from the competitive point.

THE CHAIRMAN: Would you pardon me a moment? You are talking again here of competitive rates, competitive commodity rates?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Are they what you might call a different classification of rates? Have we competitive rates and in addition to that another form called competitive commodity rates?

MR FRAWLEY: No. There are competitive commodity rates. I think every competitive rate is a commodity rate -- I think I am right about that. What we are talking about here are the rates which have long and short haul discrimination.

THE CHAIRMAN: Section 328, under the general heading of "Freight Tariffs" talks of the standard freight tariff, (b) special freight tariffs, and (c) competitive tariffs.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: I thought you had finished talking of competitive tariffs.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: But here again you say "competitive commodity rate structure"; you use the word "competitive".

MR FRAWLEY: Because it is of great importance to us, the competitive commodity rate structure, in connection with long and short haul violation. That is why we discuss it, sir.

THE CHAIRMAN: You are dealing with it separately?

MR FRAWLEY: Yes, separately, quite separately; dealing with the implications of long and short haul discrimination, but there---

THE CHAIRMAN: Does it come within 328 (c), as the other competitive tariffs do? I suppose it does.

MR FRAWLEY: Well, perhaps I should say at once that we have a new section; we have a completely new section to submit.

THE CHAIRMAN: But at the present time?

MR FRAWLEY: At the present time the trans-continental competitive commodity rates which enter into this long and short haul matter are rates called competitive rates under 328 (c) .

Although these violations of the long-and-short-haul rule are usually attributed to water competition via the Panama Canal, there is another important factor present -- market competition. Discussing the Vernon to Toronto rate on canned goods with Mr. Jefferson, this is what was said at page 15982 of Volume 80:-

"Q. There is not any doubt about it from what you have been saying the last ten minutes or so, that you do regard market competition as a justification for practising long-and-short-haul discrimination ?

A. If it is in our interests to do so."

The Canadian Pacific at page 13034 also indicated that there were no examples of long-and-short-haul discrimination due to market competition between Canadian Railways. This is incorrect. The Canadian National tolls on salt from Lindbergh, Alberta, to Saskatchewan points (tariff reference C.T.C. W - 1962) and the Canadian Pacific tolls on coal from Southern Alberta to the Pacific coast (tariff reference C.T.C. W - 4029) are examples of long-and-short-haul discrimination due to market competition between Canadian railways.

Indeed, Canadian Pacific witness McDougall indicated at page 18034 that it was a normal situation for one Canadian railroad to meet market competition from another Canadian railroad.

There can be no doubt therefore that long-and-short-haul discrimination does not spring solely from water competition.

Now, the history of this matter:-

HISTORY:-

The history of the transcontinental competitive rate structure is dealt with at pages 11733 to 11765, Vol. 61. This review makes it apparent that long-and-short-haul discrimination on transcontinental traffic is not a transitory thing but has been present since the existence of the Transport Board. The effects of this discrimination are indicated at pages 11765 to 11776 of Volume 61 in the words of the people who actually suffer from this discrimination. Although the Canadian Pacific says "they are not suffering from any hardships" (page 13018 of Volume 62) the record speaks for itself.

I will just take a moment to read one of those instances. At page 1499-1500 of Volume 9 of the Transcript, Mr. B. Bowlen, Secretary of the Alberta Co-Operative Union, said:-

"As wholesalers interested in the distribution of food products canned in Eastern Canada, we wish to draw your attention to the problems created by the so-called Panama Canal competitive rates to Vancouver. Suppose we wished to order a carload of canned tomatoes from Aylmer, Ontario. We would be assessed a charge of \$2.40 per cwt. or a total charge of \$1,440.00. A Vancouver wholesaler could get a similar shipment at a cost of \$1.37 per cwt. or total charge of \$822.00."

(He is speaking of course as of the day on which he made his statement).

"In other words, a Vancouver wholesaler pays approximately half the freight charge that we do and yet receives service for an additional 750 miles. This is only one part of the problem^{however.} With these low Coast rates in existence, a Vancouver wholesaler could actually distribute that carload of tomatoes all the way back into the Western part of Alberta. You can appreciate that absolutely and relatively, therefore, we are placed in a most disadvantageous position."

There are two reasons for this highly unsatisfactory situation. The first of these is the negative attitude of the Board of Transport Commissioners, and the second is the weakness of the legislation -- and the legislation is Section 314, sub-sections (5) and (6) of the Railway Act.

Commencing at page 11723 and continuing to 11733, we reviewed the decisions of the Board. The negative attitude of the Board is demonstrated by a reading of the cases. We refer the Commission particularly to the Transcript at pages 11888 and following.

It is beyond serious question that sub-sections (5) and (6) of Section 314 do not offer adequate protection to the localities which suffer long-and-short-haul discrimination. I will discuss that when dealing with my proposed amendments.

The experience gained in the United States with the problem of long-and-short-haul discrimination is instructive and has been clearly stated by Professor Locklin. After tracing the legislative and administrative history of this problem, Professor Locklin

The first part of the report is devoted to a description of the work done during the year. It is divided into two main sections, the first of which deals with the work done in the laboratory and the second with the work done in the field. The first section is divided into three parts, the first of which deals with the work done in the laboratory during the first half of the year, the second with the work done during the second half, and the third with the work done during the year as a whole. The second section is divided into two parts, the first of which deals with the work done in the field during the first half of the year, and the second with the work done during the second half.

The second part of the report is devoted to a description of the results of the work. It is divided into two main sections, the first of which deals with the results of the work done in the laboratory and the second with the results of the work done in the field. The first section is divided into three parts, the first of which deals with the results of the work done in the laboratory during the first half of the year, the second with the results of the work done during the second half, and the third with the results of the work done during the year as a whole. The second section is divided into two parts, the first of which deals with the results of the work done in the field during the first half of the year, and the second with the results of the work done during the second half.

The third part of the report is devoted to a description of the conclusions of the work. It is divided into two main sections, the first of which deals with the conclusions of the work done in the laboratory and the second with the conclusions of the work done in the field. The first section is divided into three parts, the first of which deals with the conclusions of the work done in the laboratory during the first half of the year, the second with the conclusions of the work done during the second half, and the third with the conclusions of the work done during the year as a whole. The second section is divided into two parts, the first of which deals with the conclusions of the work done in the field during the first half of the year, and the second with the conclusions of the work done during the second half.

The fourth part of the report is devoted to a description of the recommendations of the work. It is divided into two main sections, the first of which deals with the recommendations of the work done in the laboratory and the second with the recommendations of the work done in the field. The first section is divided into three parts, the first of which deals with the recommendations of the work done in the laboratory during the first half of the year, the second with the recommendations of the work done during the second half, and the third with the recommendations of the work done during the year as a whole. The second section is divided into two parts, the first of which deals with the recommendations of the work done in the field during the first half of the year, and the second with the recommendations of the work done during the second half.

The fifth part of the report is devoted to a description of the summary of the work. It is divided into two main sections, the first of which deals with the summary of the work done in the laboratory and the second with the summary of the work done in the field. The first section is divided into three parts, the first of which deals with the summary of the work done in the laboratory during the first half of the year, the second with the summary of the work done during the second half, and the third with the summary of the work done during the year as a whole. The second section is divided into two parts, the first of which deals with the summary of the work done in the field during the first half of the year, and the second with the summary of the work done during the second half.

concluded with the following remarks at page 11817:-

"(5) Since 1932 there have been no attempts by the railroads to obtain fourth-section relief on a large scale on transcontinental traffic."

THE CHAIRMAN: Fourth-section relief, does that mean competitive relief?

MR. FRAWLEY: Fourth-section relief means relief from long-and-short-haul discrimination. It means really the railway is permitted to violate the long-and-short-haul rule.

THE CHAIRMAN: I mean, would this remission be granted because of competition?

MR. FRAWLEY: Yes, but there must be other things shown. There must be certain things shown one of which is competition.

THE CHAIRMAN: Competition is a necessary ingredient, is that it?

MR. FRAWLEY: That is right.

".....There have been a few instances in which the railroads have applied for fourth-section relief on a single commodity or group of closely related commodities moving as transcontinental traffic. In three of these instances, limited relief was granted; in one, relief was denied.

"(6) The transcontinental rate structure today is in general conformity with the provisions of Section 4 which prohibit higher charges for shorter than for longer hauls over the same line and in the same direction, the shorter being included within

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the longer distance. The few exceptions authorized by the Commission are as noted in earlier pages.

"(7) The way remains open for the railroads to obtain fourth-section relief on transcontinental traffic at any time that they believe that it is in their interest to do so, provided that adequate justification of their proposals can be shown."

THE CHAIRMAN: Now then, does the evidence show that this adequate justification may consist of other things than just competition?

MR. FRAWLEY: Yes, in addition to competition, sir.

THE CHAIRMAN: But there must be competition?

MR. FRAWLEY: Yes, sir, competition and other things.

THE CHAIRMAN: Are you saying generally that the rates of which you complain are not justified by competition?

MR. FRAWLEY: No, I say they should be made to go to the Board and prove a series of things, not only that there is competition but some other things.

THE CHAIRMAN: Suppose there is competition?

MR. FRAWLEY: Yes, suppose there is competition, sir. That is not enough in my opinion, that is only part of the way.

THE CHAIRMAN: That is one case then - where you break away from your general rule that competition, if shown, would justify lower rates than elsewhere? That is what you told us generally about competition?

MR. FRAWLEY: Yes, yes.

THE CHAIRMAN: But in this particular kind of competition you say these rates should be disallowed whether there is competition or not?

MR. FRAWLEY: They should be disallowed unless they show competition plus other things, that is right. It is a special code or treatment they must receive.

THE CHAIRMAN: And you set out this special - -

MR. FRAWLEY: Oh, yes.

Following the general rules that have been devised in the United States by the Interstate Commerce Commission, but altering them where necessary to conform to our general concept of control, we have submitted the following amendment. This is the new Section 314A, and this new Section replaces Section 314, sub-sections (5) and (6), and it would be well perhaps to note that.

THE CHAIRMAN: Yes, just a minute now.

MR. FRAWLEY: It replaces (5) and (6).

THE CHAIRMAN: You have repealed sub-sections (5) and (6), is that it?

MR. FRAWLEY: Yes, (5) and (6) go out altogether, and this new 314A is by way of substitution.

SECTION 314A

Long and
Short Haul
Clause

(1) The Board shall not approve or allow any toll, which for the like description of goods or for passengers carried in the same direction over the same line or route, is greater for a shorter than for a longer distance, within which such shorter distance is included, unless the company upon

application has established to the satisfaction of the Board that:-

- (i) There is actual and compelling competition at the competitive point which is beyond the control of the applicant company and such competition is absent at the intermediate point.
- (ii) The toll at the competitive point is not lower than necessary to meet the competition.
- (iii) The toll at the competitive point is such as to warrant a reasonable expectation that as a result of charging the competitive toll, net earnings will be greater than they would be in the absence of such toll.

THE CHAIRMAN: Pardon me, would you tell us what you mean in sub-paragraph (i) where you say that the competition is beyond the control of the applicant company? If it is competition - -

MR. FRAWLEY: Well, it is competition of another transportation agency, sir, say, it is water competition.

THE CHAIRMAN: One of their own agencies?

MR. FRAWLEY: I say it must be beyond their control. It must be for instance, water competition through the Panama Canal, beyond the control of the Canadian Pacific Railway.

THE CHAIRMAN: Is that all competition of that kind, competition by trucks that is beyond their control?

MR. FRAWLEY: No, but that is all it means; it simply means competition which they cannot control,

and it is not a matter, I am instructed, that raises any serious question.

THE CHAIRMAN: That is what I say. It might be their own steamships.

MR. FRAWLEY: That is right, sir; that would be an example, sir, and it is perhaps the best example.

THE CHAIRMAN: You would call that, then, what, voluntary competition?

MR. FRAWLEY: Well, it would not be beyond their control. Yes, it would be competition, a service put in to create an unreal competition or something of that sort, but I assure you it is not a practical matter so far as we are concerned. There is nothing of that sort in Canada.

COMMISSIONER ANGUS: Mr. Frawley, could this situation arise? You have spoken of market competition between the two Canadian Railways. Could they both apply for permission to violate the rule and say that the competition was not within their control?

MR. FRAWLEY: Well, there would be other things that would have to be proved of course. They would never get relief just by proving that of course.

COMMISSIONER ANGUS: No, no, I didn't mean that would be enough, but would it be very easy for them to say that this is market competition?

MR. FRAWLEY: I want to be sure that I understand you.

COMMISSIONER ANGUS: As I understand it, you could have two railways that are competing at a terminal point and charging to that point higher rates than they themselves charge to intermediate points.

MR. FRAWLEY: Yes, that is so today.

COMMISSIONER ANGUS: If they are the two competitors so that they are both applying for permission to violate the long-and-short-haul clause, could each contend that the competition was beyond its control or could they be told that the two of them could stop that competition?

MR. FRAWLEY: At the moment I don't know what answer to give you on that.

THE CHAIRMAN: Isn't this the general rule, that a railway cannot be said to discriminate by fixing a lower rate at a certain point, if it is doing that to meet competition from another railway, that is discrimination among shippers is confined to discrimination practised by the railways on its own lines -- isn't that so?

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: But if they say we have to lower our rate from here because the other railway is allowing this from there, the same distance to the same market, that is not a discrimination. Would you make it so?

MR. FRAWLEY: No, because it is a situation which is forced upon you.

THE CHAIRMAN: Would you prohibit that being done then, by both of them?

MR. FRAWLEY: Well, that is not something that arises in connection with long-and-short-haul. If it is, it has got to be prohibited and they must get the approval for whatever kind of competition.

THE CHAIRMAN: It is more likely to arise in two hauls of the same description, two short or two long.

MR. FRAWLEY: Yes, not where there is an intervening short haul, but the point I am making is quite clear, that whether it is market or water competition it must come to the Board and get the prior approval.

THE CHAIRMAN: Yes, but in that sub-paragraph (1) there, you say "beyond the control of the applicant company". Do you think that the railway would come to the Board and say: "We want to put in a certain rate because we have competition from our own truckers or from our ships?" Do you think that is possible?

MR. FRAWLEY: No - -

THE CHAIRMAN: Do you think they would be listened to for a second?

MR. FRAWLEY: That is true, sir, it would be so obvious; but it must be competition which is beyond their control or they are not entitled to any relief at all. They must show that.

THE CHAIRMAN: Can you call it competition if it is within their control?

MR. FRAWLEY: Well, that would raise the question whether it is competition or not, that is right.

COMMISSIONER INNIS: Does the Interstate Commerce Commission have in mind this whole question of market competition in the description of Professor Locklin?

(Page 21993 follows)

Mr.Frawley

MR. FRAWLEY: Where he is speaking here on --

COMMISSIONER INNIS: Yes. The whole question of fourth section relief is generally directed towards water competition, isn't it?

MR. FRAWLEY: Well, my instructions are there are occasions when it is directed against market competition too, sir. There is no distinction certainly in the American statute between market competition and water competition, sir.

COMMISSIONER INNIS: The cases which center about that are very largely water competition, Panama Canal competition.

MR. FRAWLEY: Panama Canal competition and ---

COMMISSIONER INNIS: Mustn't we bear in mind the general declaration of the United States congress that both water and rail transportation are to be kept going?

MR. FRAWLEY: Yes. I have dealt with that separately in this argument, sir, but in answer to you, Dr. Innis ---

THE CHAIRMAN: It seems to me without knowing more about it, that would impose upon the Commission then a duty to see that -- for instance, the rail rates are not so low as to kill water transportation and vice versa.

MR. FRAWLEY: Yes, my lord, but I have a separate part of my brief devoted to that.

THE CHAIRMAN: We have no such declaration of policy in Canada.

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: I mean there is the test which apparently the United States Commission must bear in mind and apply.

MR. FRAWLEY: Well, we have an explanation, sir. That matter was brought up by Mr. Jefferson in his evidence.

We have an answer to make to that, sir.

THE CHAIRMAN: I don't say it is exclusive and there may be other considerations too.

MR. FRAWLEY: I don't think there is any doubt about that at all, sir, under Section 4.

THE CHAIRMAN: You are giving us now the conditions which you say should be applied by our Board where a railway wishes to put in low Transcontinental rates to meet water competition, is that so?

MR. FRAWLEY: I am sorry. Would you repeat that, sir?

THE CHAIRMAN: I say, this Section which you give us, 314-A, is to set out the considerations which the Board must bear in mind before allowing these low rates to continue?

MR. FRAWLEY: No. Before these low rates must be allowed to violate the long and short haul rule.

THE CHAIRMAN: That is what I say.

MR. FRAWLEY: Not the going in of the rate itself, but the going in of the rate and the violating of the long and short haul rule.

THE CHAIRMAN: By granting too low a rate?

MR. FRAWLEY: By charging more at the intermediate point than at the lower.

THE CHAIRMAN: I mean, of course, by charging less at the further point.

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: Now, the first thing is they must satisfy the Board that there is actual and compelling competition?

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: And that there is none at the intermediate point?

MR. FRAWLEY: That is the first thing they must

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statement of the facts of the case.

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facts of the case, as they appear from the

evidence presented.

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evidence presented.

do and then it must be shown that the toll at the competitive point --- by the way, sir, if I may just continue. I discuss these various sections as I go through with my argument, sir. I was just about to read the sub-section.

THE CHAIRMAN: "The toll at the competitive point is not lower than necessary to meet the competition."

MR. FRAWLEY: No, I was reading -- I had read sub-section one of these sub-paragraphs, and I was reading (2) of the main sub-section.

THE CHAIRMAN: All right.

MR. FRAWLEY: Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter than for a longer distance within which such shorter distance is included shall at all times be just and reasonable when compared to the toll for the longer distance.

THE CHAIRMAN: What would be just and reasonable?

MR. FRAWLEY: Just and reasonable when compared to the toll on the longer distance. I have developed that, sir.

THE CHAIRMAN: You mean mathematically just and reasonable?

MR. FRAWLEY: No. It must be just and reasonable when compared to the rate to the intermediate point. When you look at the amount of the rate, you must justify that in the light of the amount of the rate to the intermediate point; but once more, sir, I develop that in my argument as I go along.

THE CHAIRMAN: I know, but you must have an amendment there which will be in itself self-explanatory, for those who have to interpret it. All right, perhaps you can interpret it for us, then.

1845, 51

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MR. FRAWLEY: No toll, which has been approved or allowed under the provisions of subsection (1) of this section, between two points for the purpose of meeting competition applying to or from a third point, shall unduly prejudice other origins or destinations.

THE CHAIRMAN: You say "which has been approved"?

MR. FRAWLEY: Yes. After they have been through their application and had it approved, it must be such that it shall not unduly prejudice other origins or destinations.

THE CHAIRMAN: You mean if any toll shall be approved or allowed which does unduly prejudice other origins or destinations --?

MR. FRAWLEY: No, you see, mylord --

THE CHAIRMAN: They allow it first. Then after it is in operation somebody discovers that it unduly prejudices some other origin or destination, then it is disallowed. Is that it?

MR. FRAWLEY: Yes, my lord. It is a rate that has been approved. It is a rate that was put in to meet market competition. It has gone before the Board and has been approved. Now, we say that that must not unduly prejudice other origins or destinations.

THE CHAIRMAN: Once it is approved, how would it be stopped, if it is shown to prejudice unduly some --

MR. FRAWLEY: One of the people at the other origin or destination could make an application to have it disallowed.

THE CHAIRMAN: It is a matter of discrimination?

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: I thought you didn't like that?

MR. FRAWLEY: Oh well, it is inevitable here, sir.

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With respect to tolls of the kind referred to in sub-section (1) existing at the date of the coming into force of this section, the company shall, within ninety days of such date, make application to the Board for approval of such tolls as required by the provisions of sub-section (1), and until the determination of such application such tolls shall be deemed to have been approved. That is the saving sub-section. The first requirement of Section 314A is an application by the railway. The Board's present negative practice permits the railway to make a rate which violates the long-and-short-haul rule. That rate remains undisturbed until either a complaint is successful or until the Board on its own initiative requires the railway to alter the rate. An intermediate point shipper is placed in a completely impossible position under the present Statute. In order to succeed, the intermediate point must show that there has been unjust discrimination. We have previously dealt with the difficulties of that situation.

As for independent action by the Board, we have not been able to find any instance in which they have, on their own initiative, disallowed a rate which creates long-and-short-haul discrimination.

The significance of the Application we propose is that it shifts the responsibility to the railways and to the Board, rather than leaving it with the shipper at the intermediate point. Under our new Section 314A there are three things which the Railway must establish in its application. First, there must be "actual and compelling competition". As Mr. Harries said at page 12048 (61):

"The phrase 'actual and compelling competition', as used by Alberta in its submission, refers to a competitive situation which is real and not imaginary.

Actual competition exists when there is a competitive movement or when there is a reasonable likelihood of such movement if an adjustment in rates is not made to forestall it."

At that place, Mr. Harries also said:

"It is not the intention of Alberta to propose a stricter rule than that applicable in the United States, nor on the otherhand to approve language which would permit long-and-short-haul discrimination that rests on purely fanciful claims of competition that might conceivably exist in the future".

I would like to lay particular stress upon the findings of the Interstate Commerce Commission in three cases cited at p.12046: Rags and Paper to Newark, N.J., 1935 208 I.C.C. 327; Fuel and Gas Oil to Memphis; 1936, 218 I.C.C. 106; Asphalt to Fulton, N.Y., 1940, 238 I.C.C. 531.

THE CHAIRMAN: Are all these cases where the railways had applied to relief against - what was it, what do they call it, applied under the fourth section for relief?

MR. FRAWLEY: Where they had applied, yes, my lord. They are all cases of application under the fourth section.

THE CHAIRMAN: And the Commission is looking into their application to see what would be the likely result of granting it? They have not been in operation yet? The rates in question have not yet begun to operate. Is that so?

MR. FRAWLEY: These rates?

THE CHAIRMAN: These rates, which the Company wishes to establish, are not yet in existence?

MR. FRAWLEY: Before they make the application yes, my lord, that is right. There has been an attempt to

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create misunderstanding about the nature of the "actual and compelling competition" which we indicate must be present before a long-and-short-haul violation can be sanctioned.

THE CHAIRMAN: Where was this attempt made to create misunderstanding, before the Board?

MR. FRAWLEY: I would like to consider my argument developing that.

THE CHAIRMAN: Was the attempt made against this Commission?

MR. FRAWLEY: I would like to find the reference, sir. I wouldn't like to state unless your lordship wants me to. I will pick that up and put it in when I come back after luncheon.

THE CHAIRMAN: You say it was an attempt to create misunderstanding?

MR. FRAWLEY: That is right. I will have to give you the reference to that. I will do that after luncheon, if I may, sir.

THE CHAIRMAN: All right.

MR. FRAWLEY: We use the words "actual and compelling" not to eliminate what in a broad sense one may consider as potential competition, but to define the term "potential" within reasonable limits.

THE CHAIRMAN: Where is that "implicit" to be found in the Railway Act?

MR. FRAWLEY: It doesn't say "explicit". It says it is "implicit".

(Page 22000 follows).

MR. FRAWLEY: This is the Canadian Pacific's statement.

THE CHAIRMAN: Have they referred to any part of the Act?

MR. FRAWLEY: Perhaps I had better get that.

THE CHAIRMAN: We will come back to that.

MR. EVANS: If they were lower than necessary to meet competition, it would be discriminatory under the Act.

MR. FRAWLEY: To continue:

Mr. Jefferson was asked about this in cross-examination at page 16027:

"You say you do not know of any instance in which the Board has disallowed the competitive rate on that basis?

A. No, sir."

There is only one conclusion to be drawn Mr. Jefferson's evidence - the Board has quite failed in its duty to scrutinize rates which create long and short haul discrimination.

THE CHAIRMAN: I think Mr. Evans has just told us that the word "implicit" there would mean "implicit" because of discriminating. Is that it?

MR. EVANS: Yes.

MR. FRAWLEY: As long as the railways publish hundreds of rates which create long and short haul discrimination even at points as far inland as Winnipeg, it is not unreasonable to require them to show that the rates are not lower than necessary to meet the competition. Perhaps, when Mr. Evans says it is implicit, then my position is that it should be taken out and made explicit and have the Board given power to require the railways to show that the rate is not lower than necessary to meet competition. In other words, if a rate to Winnipeg - and we even had one, you may remember, to a point

in north western Ontario that was the same as the rate to Vancouver. I simply say that it is not unreasonable to require the railways to show that that rate to Vancouver, which is the same rate to a point in north western Ontario, is no lower than necessary to meet the competition.

The third requirement in our amendment is that:

"The toll at the competitive point is such as to warrant a reasonable expectation that as a result of charging the competitive toll, net earning will be greater than they would be in the absence of such toll."

This requirement covers both the compensatory nature of the rate and collateral losses.

With regard to the compensatory nature of the rate, the Canadian Pacific has taken the position that the Board does inquire into that matter. However, our research has not turned up a single case in which the Board has investigated, let alone disallowed, a competitive rate which creates long and short haul discrimination. The Commission is aware of the many different interpretations which have been placed upon the concept "compensatory". The railways said in one case - and I refer to the evidence of Mr. Walker, volume 1, page 14 - that a compensatory rate is one which simply meets the out-of-pocket expenses and a little more; in another case - and I refer to part 1 of the Canadian Pacific's submission, page 176- that a compensatory rate is one which covers almost the fully allocated cost. Our position in this regard is that whether a rate is compensatory or not will not depend exclusively on the out-of-pocket cost. Other factors are the character and importance of the traffic, seasonality of the traffic, the direction of flow, etc.

As for collateral losses, I refer to page 13056 of the record where we define a collateral loss. Briefly, it

is the loss in revenue resulting from the application of a rate, lowered by competition, to traffic which would in the absence of the lower rate still move by rail.

It is not, as Canadian Pacific supposed, the same ^a non-compensatory rate. The reference there is volume 61, page 12048. Collateral losses can have a very significant effect upon the adequacy of the competitive rate and should be a prime consideration in the Board's determination of an adequate rate.

The railways have raised certain ^{general} objections to the requirements of sub-section 1 of our new section 314 A. They have said that our proposal is unnecessary because the railway's practice already conforms to the proposed requirements, and they say that these new requirements would retard the ordinary rate making procedures of the railways. The reference there is volume 62, page 12073 of the transcript.

The record gives adequate proof of the fact that sub-section 1 of our amendment is absolutely necessary. The present procedure is entirely inadequate.

There is an unaccountable difference between the treatment of the same problem under similar circumstances in different parts of the country. Many east bound trans-continental rates were for years blanketed to intermediate points. Our exhibit 265 illustrates this condition. In contrast, the railways have vigorously opposed any suggestion that the west bound rates be blanketed.

Another example of the different treatment accorded different areas which the present practice permits is to be found recorded at page 1420 of volume 13; page 1542-4 of volume 14, in the 30% case before the Transport Board.

COMMISSIONER ANGUS: Would not your proposed amendment about equalization prevent the blanketing of rates?

MR. FRAWLEY: Oh, no.

COMMISSIONER ANGUS: Suppose the lower rate was charged to Vancouver and therefore the same rate were charged to Edmonton from Montreal, would not your equalization proposal mean that the rate from Montreal to Edmonton would have to apply to similar distances? I mean, could you call it an inter-competitive rate?

MR. FRAWLEY: Certainly, I must of course at once say no. I do not think that any such consequence could arise.

COMMISSIONER ANGUS: You suggested that there is a definition of three types of rates: the class rates, special rates and competitive rates.

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: You have suggested equalization of the first two.

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: So that a rate, to escape your equalization, must be a competitive rate?

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: Do you think that the rate from Montreal to Edmonton was a competitive rate? Competitive with what?

MR. FRAWLEY: No; the rate from Montreal to Edmonton is not competitive.

COMMISSIONER ANGUS: Would it not have to be classified, shall we say, as a special rate?

MR. FRAWLEY: Yes; it is either a special rate or a class rate.

THE CHAIRMAN: Would it not then come under your equalization basis?

MR. FRAWLEY: Yes, my lord. But with what consequence? I do not follow you.

COMMISSIONER ANGUS: Would that not, in practice, make the blanketing of rates back an impossibility under the amendment or under the set of amendments you propose?

THE CHAIRMAN: Would you tell us how blanketing you have in mind would operate?

MR. FRAWLEY: How it would operate?

THE CHAIRMAN: Yes. You say:

"Many east bound trans-continental rates were for years blanketed to intermediate points."

Do you say they are no longer so blanketed?

MR. FRAWLEY: That is right. My exhibit 265 shows that that was discontinued, in some instances as recently as last October.

THE CHAIRMAN: Now what do you want to do?

MR. FRAWLEY: I am simply pointing that out.

THE CHAIRMAN: Pardon me, but ^{what} do you say now? Do you want that disallowed now entirely for the future? It seems to me that follows if you want to provide for equalization.

MR. FRAWLEY: No. I do not agree that they are blanketed in.

THE CHAIRMAN: You say:

"In contrast, the railways have vigorously opposed any suggestion that the west bound rates be blanketed."

MR. FRAWLEY: Yes, that the west bound rates be blanketed.

THE CHAIRMAN: Do you say that they ought to be blanketed?

MR. FRAWLEY: They should be blanketed if they follow the long-and-short-haul clause.

THE CHAIRMAN: What do you mean by blanketed?

MR. FRAWLEY: Charged the same. If you have a rate to Vancouver of \$1.40, blanketing would mean that Edmonton must be charged no more than \$1.40, and Regina and so on and so forth.

THE CHAIRMAN: Would you tell us how blinding
your eyes in such would operate?

Mr. [Name]: Yes, I would say:
I have been blind for some time now, and I
am not able to see anything. I have been
blind for some time now, and I am not able
to see anything. I have been blind for some
time now, and I am not able to see anything.

THE CHAIRMAN: Now what do you want to do?
Mr. [Name]: I am simply waiting for my
eyes to get better. I am not sure when
that will be, but I am waiting for it.
I am not sure when that will be, but I am
waiting for it. I am not sure when that
will be, but I am waiting for it.

THE CHAIRMAN: You say:
Mr. [Name]: Yes, I say that my eyes
are not getting better. I am not sure when
that will be, but I am waiting for it. I
am not sure when that will be, but I am
waiting for it. I am not sure when that
will be, but I am waiting for it.

THE CHAIRMAN: Now, what do you want to do?
Mr. [Name]: I am simply waiting for my
eyes to get better. I am not sure when
that will be, but I am waiting for it. I
am not sure when that will be, but I am
waiting for it. I am not sure when that
will be, but I am waiting for it.

THE CHAIRMAN: Is not the mileage ^{to Edmonton} less than the mileage to Vancouver?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Then it would cost less?

MR. FRAWLEY: No.

THE CHAIRMAN: That is, you have just said that equalization means the same rate per mile everywhere unless there is competition.

MR. FRAWLEY: But these are not competitive rates. The rate to Edmonton is a commodity rate. Let us say it is a commodity rate.

THE CHAIRMAN: According to you, these commodity rates will cease to exist, will they?

MR. FRAWLEY: No.

THE CHAIRMAN: No. You are not asking for that?

MR. FRAWLEY: No.

THE CHAIRMAN: I see. That is as to these commodity rates. For instance, could a commodity, under your scheme of things, go from Montreal to Edmonton cheaper than from Montreal to Saskatoon or to Vegreville or some other point short of Edmonton?

MR. FRAWLEY: Could it go for less?

THE CHAIRMAN: Could it go to Edmonton for less?

MR. FRAWLEY: No. I could not conceive of any such scheme as that, because the rate from Montreal to Edmonton is not a competitive rate; and it is only because of competition that they seek to protect it.

THE CHAIRMAN: You are not departing from that rule: the same commodity going from Montreal to Edmonton should cost less to get as far as Saskatoon, say, than to get to Edmonton?

MR. FRAWLEY: Yes. That is true. That is, generally speaking, the position; yes.

COMMISSIONER ANGUS: Perhaps you would clear up what is troubling me.

MR. FRAWLEY: I should like to follow what you are saying, sir.

COMMISSIONER ANGUS: If effect were given to your proposed amendments, you probably do not want any rates blanketed back because any bona fide competitive rates to be blanketed would satisfy your conditions and therefore would get exemption from the long-and-short-haul clause. I can see that. But when you speak of ^{the railways} being opposed to the suggestion of west bound rates being blanketed, there is a sort of implication that you are thinking that might be a good thing.

MR. FRAWLEY: I quite agree. My case would simply be this. Before you can be allowed to violate, you must prove the point; and if you prove the point, very well, then you have the lower rate to Vancouver.

COMMISSIONER ANGUS: But then you prove competition with some other rate?

MR. FRAWLEY: That is right.

COMMISSIONER INNIS: You have got to prove that; and under your scheme for any competitive rate, it is just a question of whether you can prove competition.

MR. FRAWLEY: No. They are not all together the same.

COMMISSIONER ANGUS: They are not identical, but they are under exactly the same conditions, I suppose, that you have to prove these things to get your competitive rate. You get your rate to Vancouver. The tariff may be less.

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: There is no reason for blanketing that.

MR. FRAWLEY: No. They are allowed to take and charge more to Edmonton.

COMMISSIONER ANGUS: If you don't get authorization, there is nothing to blanket.

MR. FRAWLEY: Yes.

COMMISSIONER ANGUS: Then the case for blanketing would not arise.

MR. FRAWLEY: It would not arise directly. It would not be an application from Edmonton to blanket back the rates, no. It would not be that. It would simply be an application by the railway to be permitted to charge more to Edmonton than to Vancouver.

COMMISSIONER ANGUS: Suppose they had competitive rates to Vancouver and the application was made for a rate under the long-and-short-haul, and you did not get it. Would the application mean that that rate had to be blanketed back?

MR. FRAWLEY: Yes.

THE CHAIRMAN: What would the rate from Montreal to Edmonton so blanketed then be called? Would it be called a competitive rate or would it be called a special rate?

MR. FRAWLEY: It would be called a special commodity rate, I would think.

THE CHAIRMAN: Have you not said that special commodity rates are subject to your principle of equalization?

MR. FRAWLEY: Yes.

THE CHAIRMAN: That means that all other points at the same distance in Canada would have to have this?

MR. FRAWLEY: But we say there, in section 329, that there are distinctions. There are distinctions in the description of traffic.

THE CHAIRMAN: You can discuss that matter after the adjournment for lunch, Mr. Frawley.

The Commission adjourned at 1.00 p.m. to meet again at 2.45 p.m.)

Ottawa, Ontario,
Monday, May 8, 1950

AFTERNOON SESSION

MR. FRAWLEY: My Lord and members of the Commission: I was discussing the proposition that the present procedure was entirely inadequate and I was pointing out the examples of different treatments which were accorded different areas. At that point Dr. Angus asked me a question with respect to whether or not rate blanketing might interfere with my equalization scheme. I want to just deal with that for a moment before continuing with the brief. As you suggested yourself, Dr. Angus, we would not be asking for rate blanketing. It would be an application by the railways for relief from the long and short haul, so we would not be asking for rate blanketing and of course it might very well be that the railways would not immediately and automatically, if their application was refused, think of applying the port rate to that intermediate point. They might say "Well, we will try a different rate and so on" and there might be various situations, but as you said, if they were turned down, and if they did decide to apply the rate back, that is what I have to deal with sir, what I say in that case, if the Vancouver rate was applied to Edmonton for instance then that would be tantamount to establishing a rate group, and rate groupings are not inconsistent with, nor do they offend against, our principle of equalization. As we know, there is a rate group which extends all the way in a triangle from Windsor to Sudbury to Montreal and my reply therefore to you is that that would simply be a rate group and certainly all points in the rate grouping that would necessarily be established by that procedure would be entitled to that rate, and that would

Mr. Frawley

not offend ---

THE CHAIRMAN: To the same rate?

MR. FRAWLEY: Would get this same rate, yes, sir. That is true.

THE CHAIRMAN: Regardless of their respective mileage?

MR. FRAWLEY: Yes. Just as in the rate group there is in Eastern Canada, exactly the same situation.

THE CHAIRMAN: What then does become of your equalization per mile?

MR. FRAWLEY: To the extent that you are in our rate grouping, it would not apply, sir, that is right.

THE CHAIRMAN: You would make that concession?

MR. FRAWLEY: Yes, sir.

THE CHAIRMAN: I hadn't noticed that yet. I thought you wanted absolute parity according to the mileage except in the case of competition?

MR. FRAWLEY: Well, yes. The rate groups. We do not advocate the wiping out of rate groups and therefore rate groups apply then to the extent it modifies our equalization.

THE CHAIRMAN: Now then, are you quite sure the amendment you have proposed so far leaves room for that? The amendments we have been discussing so far, do they leave room for this rate grouping?

MR. FRAWLEY: Yes, My Lord. This Section I am calling your attention to is exactly the reply --- Section 329, Subsection 2.

THE CHAIRMAN: Where is that one?

MR. FRAWLEY: In the argument. I will find it for you. It is the present section. No sir, you see, Section 329 revised; I have the new subsection (1) - but subsection (2) remains unchanged, so if you have

the Railway Act, subsection (2) of 329 reads "such distances may be expressed in blocks or groups, and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls", so the intention sir is to not abolish rate groups and the scheme would ----

THE CHAIRMAN: Pardon me. Let me see again what you substitute for the first subsection.

MR. FRAWLEY: That is C-10. I will go back to C-10, sir. C-9 is my new 329, subsection (1); and subsection (2) is unchanged.

THE CHAIRMAN: What does subsection (1) say? The standard freight tariff----

MR. FRAWLEY: Yes sir, that is for the standard tariffs, and then 329A is my equalization section for commodity special.

THE CHAIRMAN: Pardon me a moment. You leave 329A the way you have it at the bottom of page C-9. Is that so?

MR. FRAWLEY: I leave 329 ----

THE CHAIRMAN: Standard freight tariff shall specify maximum mileage tolls to be charged, and so on. That is all standard?

MR. FRAWLEY: Yes, My Lord, that is standard.

THE CHAIRMAN: Then you leave 2 as it is, which says "such distances - that is having reference to standard rates, - may be expressed in blocks or groups and so on"?

MR. FRAWLEY: Yes, My Lord.

THE CHAIRMAN: That is for standard rates.

MR. FRAWLEY: Commodity rates, special rates are dealing with 329A.

THE CHAIRMAN: There again ----

MR. FRAWLEY: The same wording.

THE CHAIRMAN: You allow for grouping, do you,

Mr. Frawley

MR. FRAWLEY: Yes, My Lord, by leaving the same section. We write it in, sir. You will find that at the bottom of C-10 where we say "such distances may be expressed in blocks or groups and such blocks or groups may include relatively greater distances for the longer than for the shorter hauls".

THE CHAIRMAN: That is one that is still remaining undisposed of with respect to your proviso?

MR. FRAWLEY: The proviso on the bottom of C-10, sir?

THE CHAIRMAN: Yes, because you bring in the word "competitive" there. We discussed that this morning. It is quite clear that not only must the principle of equalization be broken into by the establishing of competitive rates but also again by the groupings?

MR. FRAWLEY: Yes, My Lord, that is my submission, sir. Now, if I may continue with my brief. On page H-11 dealing with another instance for saying why the present procedure is not adequate, another example of the different treatment accorded different areas which the present practice permits is to be found recorded at p. 1420 of Vol. 13; p. 1542-4 of Vol. 14".

COMMISSIONER ANGUS: Before we leave that point, if a railway makes an application for relief on the long and short haul rule and fails to get it, but nevertheless puts in a competitive rate, that would mean, I suppose, that it could satisfy the condition for the competitive rates but not the conditions for the long and short haul relief. Now, isn't the only difference there the fact that the long and short haul relief requires there should be no adverse effect to the railways net revenue?

MR. FRAWLEY: Collateral losses, sir. There are just two differences. One is there is no prior application

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and the collateral losses do not enter into competitive rates.

COMMISSIONER ANGUS: In a hypothetical case, they have fallen down because it has been shown that to put in this competitive rate would involve them in losses: and the case you are considering now is that they go ahead and put it in and augment those losses by blanketing the rate there is. It is a rather curious hypothesis, isn't it?

MR. FRAWLEY: Yes, my Lord, but it doesn't follow, you see, sir. It doesn't follow necessarily. In that case, my Lord, might I suggest they would re-examine the situation.

COMMISSIONER ANGUS: And not put in the competitive rate?

MR. FRAWLEY: And not put in the competitive rate or put it in at a higher level.

COMMISSIONER ANGUS: Well, that was really what I meant. That dealing with a body of proposals on your part, that would practically eliminate blanketing the rates, because in order to get a case of the rates being blanketed, you have to imagine something that is very unlikely to happen.

MR. FRAWLEY: Well, certainly, sir. Our position is and it has been the same since the beginning, we simply take the position that the railways must go to the Board and make an application and get relief after the application has been made and after these conditions have been satisfied and it in no sense is an application by Edmonton "we hereby apply for the Vancouver rate" or anything of that sort. There has been a little bit of a misunderstanding. I think not by the people who have examined your proposal, but certainly it is well to make

Mr. Frawley

that clear, that there is no such application of that sort in our minds at all. Now, in this case in 1947, the railways granted the packing industry ----

THE CHAIRMAN: What page are you?

MR. FRAWLEY: Page H-11, sir. In 1947 the Railways granted the packing industry at Winnipeg the same rate on canned meats to Vancouver as was given to the packing industry in Toronto, although there was no water competition at Winnipeg such as supposedly justified the rate on the movement out of Toronto. At the same time the higher rates from Calgary and Edmonton to Vancouver were left unchanged. That a situation could have arisen - so obviously contrary even to the prevailing negative interpretation of Section 314 by the Board - is clear proof of the weakness of the present long and short haul legislation and its inability to give satisfactory protection to intermediate points.

THE CHAIRMAN: Pardon me a moment. Does that mean they group Toronto and Winnipeg together?

MR. FRAWLEY: No. Well, yes, you might call it that, sir, yes.

THE CHAIRMAN: That is a grouping you do not approve of?

MR. FRAWLEY: I don't think one can say that, My Lord. At that time there was a rate of 96 cents from Toronto to Vancouver. There was a rate from Winnipeg of \$1.16, I think, or \$1.20, and there was a rate of 98 cents from Calgary and Edmonton. Those were the three rates.

THE CHAIRMAN: The railways then grouped Toronto and Winnipeg together and gave Winnipeg the same rate as Toronto?

THE CHAIRMAN: Or Toronto the same rate as Winnipeg?

Mr. Frawley

MR. FRAWLEY: They gave Winnipeg the same rate as Toronto and you might say properly they grouped them then.

THE CHAIRMAN: Well, it was a grouping.

MR. FRAWLEY: We didn't care about that but they left Edmonton and Calgary at 98 cents.

THE CHAIRMAN: You are not in the group, that is why.

MR. FRAWLEY: Oh well, that is with respect too easy an answer, sir. They simply left us alone, that is all. They violated the long and short haul rule. They just continued to violate it. Then we had Toronto to Vancouver 96 cents, Winnipeg to Vancouver 96 cents, Calgary to Vancouver 98 cents. Just a straight violation, that is all.

THE CHAIRMAN: Do I understand that this grouping, which you say you would allow, measuring distances, must not however give rise to a complaint somewhere else?

MR. FRAWLEY: No, that is true, quite so, sir. There must be no long and short haul violation regardless of groups. The Vernon to Toronto rate ---

THE CHAIRMAN: I would say in that case you better be very careful about the language you use. All right, go on.

MR. FRAWLEY: The Vernon to Toronto rate on canned goods which was discussed with Mr. Jefferson at Vol. p. 15968/(80) gives another example of the different treatments accorded different regions. The Okanagan Valley at the whim of the railways was given the lower Vancouver-to-Toronto rate. But the higher rate from Brooks, Alberta, to Toronto was left unchanged. These illustrations indicate that the present legislation is inadequate and the negative attitude of the Board is wholly

Mr. Frawley

unsatisfactory. It is irrelevant to suggest, as the Canadian Pacific did at page 13015, that Alberta does not have confidence in the business judgment of the railway. Good business judgment on the part of the railways will not necessarily assure equitable treatment to particular communities.

(Page 22020 follows)

We also challenge the suggestion made at page 12073 that the proposed amendment would tend to retard the ordinary day-to-day rate-making procedures of the railways. Under our new section the Board would be free to grant immediately temporary approval of the proposed violation, if the rate conformed prima facie to the requirements of the section.

There was also the suggestion that the railways might have a rate approved under the section - a rate to meet a specific truck rate - only to have the trucks cut the rate, forcing the railways to make another application.

Under our proposed amendment the Railway would not necessarily have to make a new application to obtain relief from the long and short haul rule in order to meet this new truck rate. In approving the original application the Board could set the lower limit below which the rail rate could not go. The railway would thus be free to set any rate above that lower limit required to meet the situation.

Turning now to subsection 2 of our amendment, which require the intermediate rate to be just and reasonable when compared with the toll for the longer distance.

THE CHAIRMAN: Sub-section 2 is at H-5.

MR FRAWLEY: On page H-5 yes, on the same page, sir, sub-section 2. That is the section which says that when the rate is greater for the shorter than for the longer distance it must be just and reasonable when compared to the toll for the longer distance. Now, under those circumstances we say that is a fair provision to put into the section.

The railways are very fond of labelling rates

and objecting to comparisons made between what they call unlike rates.

THE CHAIRMAN: Just a minute, Mr. Frawley. You use the words "just and reasonable" there.

MR FRAWLEY: Yes, just and reasonable, sir, in amount; in amount principally. I develop it as I go along there, sir, as well as I can.

THE CHAIRMAN: Just and reasonable as between whom?

MR FRAWLEY: As between the person who pays it and the railway. I would be content to have the usual criterion applied; that is, it must be just and reasonable to the railway and it must be just and reasonable to the shipper. It is the particular context of this test that is important. It must be reasonable when compared to the toll for the longer distance, and what I am about to say discusses that, sir.

THE CHAIRMAN: Well, how would it be just and reasonable unless it is justified by some particular conditions and circumstances? You say:

"Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter than for a longer distance within which such shorter distance is included shall at all times be just and reasonable when compared to the toll for the longer distance."

MR FRAWLEY: Let us take an example at once, sir---

THE CHAIRMAN: What would be the test you would apply there to show that?

MR FRAWLEY: Let us take a concrete case, sir, and say the rate from Toronto to Vancouver was \$1.00 and the rate from Toronto to Calgary was \$2.00. Now, I say

that the rate to Calgary must be just and reasonable, and I add immediately, when compared to the rate to Vancouver from Toronto. In other words, before that rate to Calgary of \$2.00 could be declared to be just and reasonable, it would have to be compared and examined in the light of the \$1.00 rate to Vancouver, and the Board would have to say that \$2.00 rate to Calgary is just and reasonable when compared with \$1.00 to Vancouver.

THE CHAIRMAN: I thought, though, it would be the other way around; you would have first a rate of \$2.00 from Toronto to Calgary, and then the railway would apply to have a rate of \$1.00 from Toronto to Vancouver. That is the way it would go.

MR FRAWLEY: Yes, that is quite right; that is the way it would go.

THE CHAIRMAN: Then the Calgary people would object and say, "Here, you are carrying these goods all the way from Toronto to Vancouver at less than you carry them say to Calgary." Isn't that it?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: And then the railway would be called upon to justify that discrimination.

MR FRAWLEY: No, it is not quite like that, sir. Without the Calgary people complaining at all, the railway applies to the Board, and they have to---

THE CHAIRMAN: Applies to the Board for what?

MR FRAWLEY: For leave to continue to charge \$2.00 to Calgary.

THE CHAIRMAN: No, no. They have a right to do that. Here is a ceiling, and here is a rate, and so far the rate to Calgary cannot be attacked, because it is within the ceiling allowed by the Board -- isn't that so -- from Toronto to Calgary?

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: Now, the railway moves then to give a cheaper rate to Vancouver, and then Calgary gets up and says, "No, that would be discrimination against us. You want to carry these goods away off to Vancouver for less than we are paying," and then the question would be whether the lower rate to Vancouver should be lower; isn't that so?

MR FRAWLEY: Yes, in the end that is the point. In the end the Board is there to make a ruling on that one matter, "Is the rate to Vancouver to be allowed?" and along the way of deciding that they must find that the rate to Calgary is just and reasonable; no matter how long it has been there, sir, they must find that the rate to Calgary is just and reasonable when compared with the \$1.00 rate to Vancouver. That is what the section says, sir.

THE CHAIRMAN: No, the section says:

"Any toll which for the like description of goods or for passengers carried in the same direction over the same line or route is greater for a shorter" -- that is, greater to Calgary.

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: --"than for a longer distance" -- Vancouver --

"within which such shorter distance is included shall at all times be just and reasonable when compared to the toll for the longer distance."

Then would they, when the railway applies to put into effect a lower toll to Vancouver, at once say, "Here, but you have in the way, you have Calgary there"?

MR FRAWLEY: Yes, that would be a prohibition.

THE CHAIRMAN: "And therefore we cannot give you a lower toll to Vancouver unless you apply the same toll or

even a lower one, because of less mileage, to Calgary."

MR FRAWLEY: Yes, that is---

THE CHAIRMAN: So that, instead of the \$2.00 from Toronto to Calgary, if the railway wishes to carry goods to Vancouver for \$1.00, it would have to carry them to Calgary for 60¢ or 70¢ or whatever is the just proportion.

MR FRAWLEY: Or \$1.00.

THE CHAIRMAN: Yes, but then you have discrimination just the same. Why should it be \$1.00 to both, when there is such a great difference in mileage?

MR FRAWLEY: Well, there is no discrimination, sir, if it is \$1.00. It would satisfy the requirements of this section, sir.

THE CHAIRMAN: Would it? Would it be just and reasonable when compared to the toll for the longer distance? Would you say it was just and reasonable for Calgary to pay \$1.00, when you compare that with the same toll of \$1.00 to Vancouver? How could it be?

MR FRAWLEY: That, of course, is the situation all through, sir, on long---

THE CHAIRMAN: But you are putting specific provisions there. Would you not argue immediately, "It cannot be just and reasonable, because Vancouver is a thousand miles farther off, and you make us pay \$1.00. Then you must make us pay less than \$1.00 if Vancouver pays only \$1.00." Isn't that it?

MR FRAWLEY: I know what situation might develop, sir.

THE CHAIRMAN: It is not what might develop, it is what will develop if this amendment of yours is adopted -- at least, I do not see any other explanation.

MR FRAWLEY: As far as this section is concerned,

sir, before the Board could give the railway the right to charge the \$1.00 to Vancouver---

THE CHAIRMAN: On what ground?

MR FRAWLEY: On the ground that it had met these conditions, that there was actual and compelling competition under 1, that the toll to the competitive point was no lower than necessary under 2, and that there were no collateral losses under 3. Now, having satisfied those---

THE CHAIRMAN: Would your requirement then be read this way, that the toll to whatever it is -- to Vancouver -- shall not be less than the toll to any place nearer than Vancouver?

MR FRAWLEY: No, no, my lord; it does not go that far.

THE CHAIRMAN: How far do you go? You say it would satisfy Calgary's complaint if they gave Calgary a toll of \$1.00, the same as Vancouver?

MR FRAWLEY: Well, yes, because it---

THE CHAIRMAN: That is what you say?

MR FRAWLEY: Yes, or it might be more, sir -- no, no; it might be more. It only must be just and reasonable when compared to the toll. It might be more than that but still be just and reasonable.

THE CHAIRMAN: I ask you what is your test of justness and reasonableness. What does the Board do? Supposing the Calgary people said, "Why should we pay \$1.00 when Vancouver pays only \$1.00?"

MR FRAWLEY: Well, of course, the question of---

THE CHAIRMAN: Would the answer be, "Well, there is competition"?

MR FRAWLEY: Yes, that is one answer, sir; that would be a very good answer; but it is the degree, that is all, sir. I would say that if there was a rate of \$1.00 to

Vancouver---

THE CHAIRMAN: Then you leave the degree in the discretion of the Board; is that it?

MR FRAWLEY: That is necessarily so, yes, sir.

COMMISSIONER ANGUS: Mr. Frawley, is not the argument on which these rates are put in this, that the lower rate to Vancouver keeps the railway's net income at a maximum, and theoretically if that and other rates at the same time are not put in, then there might have to be an increase in all freight rates, including those to Edmonton?

MR FRAWLEY: I think that is what the railways say, sir.

COMMISSIONER ANGUS: And the argument would then be that it was just and reasonable that the people at Edmonton should put up with paying the same rate as before, in order to avoid paying a higher rate?

MR FRALWYY: That is what they say, sir, that is what they say. I have heard them say just that exactly, sir.

COMMISSIONER ANGUS: Now, either you accept that or you do not. Suppose that you say that because there is a glaring disparity between the two rates, and one of them is double the other, and that looks dreadful, you are going to reduce the rate to Edmonton, is not the effect of that to diminish the net income of the railway and to bring about the very situation that forces an increase in rates? Isn't that the way that argument would work?

MR FRAWLEY: I follow you, sir, when you say, if the rate was not very large, if the rate say to Edmonton was \$1.25 and the rate to Vancouver was \$1.00; then I think that the Board in ruling even under my sub-section 2, would say, "Well, that is just and reasonable, and we will leave that, and we will permit the two rates to stay as they are."

I quite agree that when you take \$1.00 and \$2.00, then the comparison gets to be almost shocking---

THE CHAIRMAN: That was the example you gave to us

MR FRAWLEY: Well, there are many of them, and I did not mean to say that there were not instances when the rate to Edmonton could not be higher, say \$1.25, and \$1.00 to Vancouver. The Board could say, "We will allow the rate to remain at \$1.00, because you have proved 1, 2 and 3, and now, looking at sub-section 2, when we compare the two we will say that the rate of \$1.25 to Edmonton is just and reasonable compared to the rate of \$1.00 to Vancouver, and the application is"---

THE CHAIRMAN: Your use of the word "distance" is what causes uncertainty in my mind. You see, you put the basis of comparison as that of distance -- "just and reasonable when compared to the toll for the longer distance".

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Now, do I understand you to say that the railway would not be allowed to put into effect a rate to Vancouver unless it gave the same rate to Calgary?

MR FRAWLEY: No, I do not mean that.

THE CHAIRMAN: They might keep the rate to Calgary higher.

MR FRAWLEY: They might; and the Board might countenance all that after hearing the application, sir, yes.

THE CHAIRMAN: You would be content then?

MR FRAWLEY: If it had been adjudged, as I say it might be in certain circumstances and with certain rates in mind, that the rate to Edmonton was just and reasonable when compared to the rate to Vancouver, and as I said---

THE CHAIRMAN: How could it be just and reasonable on a mileage basis?

MR FRAWLEY: Well, there are---

THE CHAIRMAN: Do you mean competition?

MR FRAWLEY: Yes, there are circumstances there.

THE CHAIRMAN: You are getting back to competitive rates, are you?

MR FRAWLEY: Well, there is always that competitive rate, sir. We cannot get far away from competitive rates in this discussion. One is a competitive rate to the port, and all I say is that there must be, before the higher rate to the intermediate point is allowed, an examination of its justice and reasonableness and---

THE CHAIRMAN: Is not the usual test of a competitive rate -- we have heard it so many times we all know it by heart -- not lower than to meet the competition and so on? That would not apply to these transcontinental competitive rates.

MR FRAWLEY: Not to these violating rates, not to these long and short haul violating rates. Then we have a complete and separate code in 314 A.

THE CHAIRMAN: Now, your code is here; it is just this part of the code I am dubious about. You say at all times it shall be just and reasonable. You mean to say in respect of all places, all localities, I suppose, but you put it, "when compared to the toll for the longer distance."

MR FRAWLEY: Well, you see how---

THE CHAIRMAN: That is, it is not the competitive rates of which you are adjudging the reasonableness, it is the Calgary rate.

MR FRAWLEY: Yes, and it must be a rate which is included in the longer distance. It must be Calgary to Edmonton to Vancouver, and all this section says is that this rate to the shorter place, to the shorter distance, must be just and reasonable when compared to the rate for the longer distance.

THE CHAIRMAN: Whenever a rate for a shorter distance -- that is, to Calgary -- is greater, or as great as, I suppose, a rate to a longer distance.

MR FRAWLEY: Which is included; in which the shorter is included.

THE CHAIRMAN: It is the Calgary rate that must be considered.

MR FRAWLEY: That is right. That must be declared to be just and reasonable when compared to the rate to Vancouver, the longer rate. That is right, sir.

THE CHAIRMAN: And if Vancouver pays only \$1.00?

MR FRAWLEY: If Vancouver pays only \$1.00---

THE CHAIRMAN: Then how much should Calgary pay?

MR FRAWLEY: The rates would be there, sir. The rates would be, as you yourself said at the beginning of this discussion -- there would be a rate there. Let us say it is \$2.00. The result would depend upon what kind of rates you took. You could take a gradation of comparisons. You could say the rate to Vancouver was \$1.00 and the rate to Calgary was \$1.05. Now, I say that the Board could say that that rate to Calgary was just and reasonable compared to the rate of \$1.00. As a matter of fact, as far as I am concerned, my section is there, and they could declare it all to be, but I say it would be more difficult when the rate is \$2.00 to Calgary and \$1.00 to Vancouver. It is less difficult when it is \$1.50, it is even less difficult when it is \$1.05. That is the scheme of things, sir.

COMMISSIONER ANGUS: The limit to the present difference is the rate back, isn't it, from Vancouver to Calgary?

MR FRAWLEY: Some such horrible thing as that, sir. It is the rate back. They think we are lucky when we

do not pay any more than the rate back.

THE CHAIRMAN: In any case the Board might say to the railway, "Very well, you can have your \$1.00 rate from Toronto to Vancouver, provided you give Calgary a cut too."

MR FRAWLEY: No.

THE CHAIRMAN: Might, I say.

MR FRAWLEY: Oh, yes.

THE CHAIRMAN: That is what Calgary would expect.

MR FRAWLEY: But the railways would have to decide that for themselves, sir; they would have to decide that. They would be refused first. Let us assume they would be refused the rate. Then they could go back to their offices and say, "Well, we will try some other relation of rates, and instead of charging \$1.00 and \$2.00 we will charge Vancouver \$1.50 and Calgary something more than that, \$1.75 or something of that sort."

THE CHAIRMAN: You think that would be just and reasonable?

MR FRAWLEY: I do not say, sir. Then they would submit that to the Board, but in the result---

THE CHAIRMAN: And what would Calgary say?

MR FRAWLEY: Well, you see, I cannot make this point too much, sir. All that would have to be declared whether Calgary was there or not, you see. The railways would have to satisfy the Board---

THE CHAIRMAN: Calgary would be there all right. You are here today.

MR FRAWLEY: Well, Calgary might be there because they were so interested in these things, that is all, sir.

COMMISSIONER ANGUS: Mr. Frawley, this plan that the rate must be compensatory and must not involve a loss to the railway, would that be applied not merely to the

rate to Vancouver but to the whole system of rates that had to arise from it, that is to say, this block of rates? The railway might go to the Board and say, "All right, the rate of \$1.00 to Vancouver, we can prove that that will add to our income," but the Board says, "Oh, no, but if you do that you would have a block of rates that includes Edmonton and other places on the same commodity, so that your income would be further decreased." Must the railway then go away and make calculations to show that even under those circumstances these changes will be profitable to the railways?

MR FRAWLEY: Well, of course, the Board does not say, "Now, we will only let you charge \$1.00 if you charge Calgary \$1.00 too." They decide whether or not they shall be allowed to put in that rate, and these pertinent facts must be there and must be satisfied before they can make that order.

THE CHAIRMAN: Well, you see, you have already given these other tests, that is to say, the existence of actual and compelling competition, and then that the toll is not lower than necessary to meet that competition.

MR FRAWLEY: It must meet that test too.

THE CHAIRMAN: And that there is a reasonable expectation that the net earnings will be greater.

MR FRAWLEY: Greater.

THE CHAIRMAN: And after all that is done you have also to show that this toll which is applied for must be just and reasonable to all intervening points.

MR FRAWLEY: No.

THE CHAIRMAN: Because you cannot select Calgary.

MR FRAWLEY: You can select any point that is higher, that is charged at the moment higher.

THE CHAIRMAN: Charged what would be proportion-

ately higher. You say "just and reasonable when compared to the toll for the longer distance".

MR FRAWLEY: That is quite right, sir; and you have to compare this \$1.00 rate with \$2.00 at Calgary, \$1.50 at Regina, \$1.25 maybe at Brandon, and so on.

THE CHAIRMAN: And show that it is just and reasonable.

MR FRAWLEY: And you have to satisfy the Board that these intervening rates, the \$1.25 at Brandon, the \$1.50 at Regina and the \$2.00 at Calgary, are just and reasonable when compared to the \$1.00 at Vancouver.

THE CHAIRMAN: I can understand them being just and reasonable as between railway and shipper, but as soon as you compare them with Vancouver, which is farther away and gets a great deal lesser rate, I do not know what would become of your test of **just and reasonable**; would it be the necessities of the railroad?

MR FRAWLEY: No, my lord. If they are charging Calgary \$1.00 and Vancouver \$2.00, and they have to satisfy the Board that the rate of \$2.00 is just and reasonable when compared to \$1.00, I think it would be rather difficult to show.

THE CHAIRMAN: I know, but supposing it is only 10¢ or 5¢?

MR FRAWLEY: Then I think they would show it, and the case would be finished.

THE CHAIRMAN: Well, how would they show it? How would they show that it is just to charge Calgary 10¢ more than Vancouver?

MR FRAWLEY: Because they would say, "We have competition to meet at Vancouver."

THE CHAIRMAN: You always get back to competition.

MR FRAWLEY: That is a circumstance which justifies.

THE CHAIRMAN: You see, you have already put your

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three strings on competition -- one, two and three; they are, actual and compelling competition, competitive toll not more than necessary, expectation of increasing the company's revenue -- and then when all that is done you still have this fourth obligation that you must take into consideration of these intervening points, to make sure you are not leaving their tolls too high; that is what you are doing.

MR FRAWLEY: That is right, that is right, my lord.

THE CHAIRMAN: Why don't you just make it number four instead of making it a separate sub-section?

MR FRAWLEY: Well, I do not think it would make a great deal of difference, sir.

THE CHAIRMAN: I think it would. I really remain very dubious about what the Board could possibly do, having got through one, two and three, and then being met with this other "just and reasonable when compared to the toll for the longer distance." I would be very much afraid of how that would work out.

MR FRAWLEY: Well, my lord, it would give---

THE CHAIRMAN: It is bound to create all sorts of controversy. You say yourself that apparently \$2.00 as opposed to \$1.00 would be unjust and unreasonable.

MR FRAWLEY: I would think the Board would find that, yes.

THE CHAIRMAN: And \$1.10 as opposed to \$1.00 in your judgment would not be unreasonable.

MR FRAWLEY: It might or might not, sir; but it would be not so likely to be adjudged unjust and unreasonable; but the Board would have to, after listening---

THE CHAIRMAN: I am sorry to take so much time, but I think it must be taken, because it is a very big question.

MR FRAWLEY: Oh, yes, my lord.

THE CHAIRMAN: Here is a rate between Toronto and Calgary which up to the present has not been disputed, therefore it has been assumed to be just and reasonable.

MR FRAWLEY: Well, I would not like to agree that it had not been disputed, sir, because all these rates---

THE CHAIRMAN: I am just supposing a rate that has not been disputed.

MR FRAWLEY: Has not been officially---

THE CHAIRMAN: Perhaps there are none now that have not been disputed, but just supposing one that has not, from Toronto to Calgary, going on, and here it is, here is the commodity and here is the rate; we will suppose that rate may be \$2.00.

MR FRAWLEY: Let us take one actual rate, \$2.58 to Calgary and \$1.40 to---

THE CHAIRMAN: I am not taking a rate that you had in dispute; I am assuming one that is not in dispute.

MR FRAWLEY: Then leave that one out.

THE CHAIRMAN: We will say it is \$2.00 on some commodity from Toronto to Calgary, and things are functioning satisfactorily that way as between shipper and consignee and railway; then one day the railway says, "We want to carry the same goods out to Vancouver for \$1.00." How then does that make the rate from Toronto to Calgary unreasonable or unjust?

MR FRAWLEY: This section would require that there be an examination of it from that point of view, sir. The statute would require that the two things be examined in that particular setting. That is what my statute would do, sir.

THE CHAIRMAN: It seems to me that either a com-

petitive rate is justified or it is not, because it is a competitive rate between one point and another, competition to be met and the rate not unduly low to meet that competition, and paying compensation over and above cost. Now, I understand that, but when you interject into that then what you might call a general revision of all intervening rates, that is a very different thing.

MR FRAWLEY: My lord, let me point out to you the importance of that intermediate---

THE CHAIRMAN: You have nothing to go by except the loose words "just and reasonable".

MR FRAWLEY: My lord, let me point out to you the serious consequences there which will perhaps throw a little light on it. There is a rate now, as your lordship says, from Toronto to Calgary of \$2.00, and it has not been questioned, and it is doing its work, and then the railway says, "We want to put in a rate of \$1.00 to Vancouver."

THE CHAIRMAN: How does that hurt Calgary?

MR FRAWLEY: Your lordship will see at once that it would hurt Calgary. Goods would go to Vancouver for \$1.00 and start coming right back into Calgary from Vancouver, and Calgary would have no protection against a rate like that.

THE CHAIRMAN: Then there might be a place there for a rule which would prevent the goods from coming back all the way to Calgary at that---

MR FRAWLEY: Well, yes, my lord, but, with ... respect, I think then that would be a difficult sort of rule. You would not want to be prohibiting the movement of goods.

THE CHAIRMAN: The Board must have something in mind when it is adjudging "just and reasonable".

MR FRAWLEY: Yes, but all I mean to say, my lord, is that they could not approach it from the standpoint of

prohibiting the movement.

THE CHAIRMAN: How could they approach it?

MR FRAWLEY: From the standpoint of the rates, that is all. I am only thinking of the constitutional question. Perhaps I should not be bothered---

THE CHAIRMAN: What you would say there would be unjust and unreasonable would be the possibility of shipments going all the way to Vancouver and back to Calgary at less or not more than the direct shipment from Toronto to Calgary.

MR FRAWLEY: That is right, sir.

THE CHAIRMAN: That is unjust to Calgary, you say.

MR FRAWLEY: I think that is unjust and unreasonable to Calgary.

THE CHAIRMAN: It is not any more than they paid before.

MR FRAWLEY: No, but they might have their duly established businesses invaded by nothing but this action of the railway.

THE CHAIRMAN: Invaded by whom?

MR FRAWLEY: By Vancouver people.

THE CHAIRMAN: You mean by people shipping back?

MR FRAWLEY: Shipping right back into Calgary, and a distribution territory which Calgary had built up would suddenly shrink to nothing.

THE CHAIRMAN: You are not thinking there of the consumer, you are thinking of those who are interested in Calgary---

MR FRAWLEY: That is quite right, my lord -- the distributors immediately and the consumers very quickly and rapidly associated with them.

THE CHAIRMAN: That seems to me the test, then. It would be in favour of these centres, and it would have to

provide that there could not be these back shipments which would prejudice the business standing of these intervening communities; is that so?

MR FRAWLEY: Yes. When your lordship says---

THE CHAIRMAN: Why don't you say so?

MR FRAWLEY: Well, it is surely all there, sir. I mean, it must be judged, the reasonableness must be judged, after a comparison of the two rates.

THE CHAIRMAN: I know, but whose reasonableness? For instance, the consumers in and around Calgary might hail that with joy and say, "Here, we are going to get these things from Toronto at so much less now. We will have a lesser rate. Bring them back from Vancouver if we have to."

MR FRAWLEY: Well, my lord, I think that for the whole economy of Alberta that would be a very wrong thing, to see Vancouver---

(Page 22037 follows)

THE CHAIRMAN: Why, I say, do you not say so in specific language?

MR. FRAWLEY: You mean, limited to that sort of case?

THE CHAIRMAN: Yes.

MR. FRAWLEY: My lord, it might have been practised in the - -

THE CHAIRMAN: And give that as an example.

MR. FRAWLEY: That is exactly why I did give it to your lordship.

THE CHAIRMAN: Not for me; I mean, in the Act. The long haul are you talking of, and the short haul, and one of the tests is to be of competition, that no competitive rate shall be fixed which will allow goods to be shipped back to an intervening point at a less rate or the same rate as directly from the point of origin to that particular point. In that case, why not say so?

MR. FRAWLEY: Well, I mean, to put that in the Statute would limit it to one - -

THE CHAIRMAN: You see, the words you put in were "just and reasonable".

MR. FRAWLEY: Compared, yes, to the rate for the longer distance, and I would like to think that over and above the matter of invasion of distribution territories there might be something else to be said.

THE CHAIRMAN: You see, under the Act so far interpreted we have been told many many times that these words "just and reasonable" have in consideration three parties, the railway, the shipper and the consignee.

MR. FRAWLEY: Yes.

THE CHAIRMAN: Now, who is going to suffer by

this very rate you are afraid of for Calgary? Who would it be? The shipper from Toronto or would it be the consignee in Calgary or Vancouver or who else would it be?

MR. FRAWLEY: I say the consignee in Calgary would suffer.

THE CHAIRMAN: I see, why?

MR. FRAWLEY: Because, I submit it is essentially wrong that they would be paying a rate which theoretically involves a trip to Vancouver and back and the costs that are involved in such a movement.

THE CHAIRMAN: Then he could apply, or somebody on behalf of the consignees, the consumers I suppose it would be, they would apply for a lesser rate between Toronto and Calgary direct?

MR. FRAWLEY: Well, he might apply for a rate graded for distance which would be less to him than to Vancouver,. Well, that is true, but then what luck he would have about that is - -

THE CHAIRMAN: Can you tell me where you stop with this blanketing - back? You wouldn't stop at Calgary?

MR. FRAWLEY: No, Calgary is just an example. We showed the Commission violations as far back as Bonheur, in Ontario, near Port Arthur, or something.

THE CHAIRMAN: But I mean the other way, west.

MR. FRAWLEY: I perhaps don't - -

THE CHAIRMAN: This is down further between Calgary and Vancouver.

MR. FRAWLEY: Well, there are not any distribution centres -- well, there is Revelstoke in a very small way perhaps.

THE CHAIRMAN: There may be.

MR. FRAWLEY: There may be, yes, but a place like Revelstoke wouldn't get that.

THE CHAIRMAN: Do you think if we leave the language this way the Board will know how to interpret it?

MR. FRAWLEY: Yes, my lord, and I think it is better to have it wide open than to limit it, with respect.

The railways are very fond of labelling rates and objecting to comparisons made between what they call unlike rates. Perhaps the extreme in this regard was reached at page 16020, Volume 80, where the following question was put to Mr. Jefferson:-

"Well, then, no matter how many times greater than the competitive rate was the intermediate rate, the fact was of no significance to you?"

And his answer was:- "No".

This is an absurd position. If you charge an intermediate point more than a competitive point, what fairer comparison of the level of the intermediate charge can you have than the rate which is applied to the competitive point? The concept of "reasonable per se" is meaningless where the problem of long-and-short-haul discrimination is involved. "Reasonable per se" must involve a comparison of rates to similar points in the same area and that immediately ignores the problem which suggests the comparison -- namely, the discrimination.

A homely example may serve to point up this particular problem. Bill Jones, a negro, complains

of the fact that the treatment he receives in the community is discriminatory.

THE CHAIRMAN: You don't say in relation to Mr. Armstrong, do you?

MR. FRAWLEY: Well, he might come from a neighbouring island.

THE CHAIRMAN: You are not making him a negro?

MR. FRAWLEY: If he resides in the community, but he has probably been transplanted into Georgia by that time.

Now, it is no answer to his contention to tell him that he receives reasonable treatment because it is the same as that accorded to his neighbours, Jack Brown and Joe Smith, who also are negroes.

COMMISSIONER ANGUS: Of course you might take a commonplace example. From the point of view of the railways won't the problem look just like this? How much must you give the dog in the manger to stop him barking?

MR. FRAWLEY: Well, I am willing to be the dog in the ~~manger~~, and I am willing to have offers from my friends to stop me barking and that may be any fair rate.

THE CHAIRMAN: In the example you have given us previously, Calgary is the dog in the manger?

MR. FRAWLEY: Yes, according to Dr. Angus's suggestion. If it is a dog that complains and thinks that he has been treated very badly, then Calgary is the dog in the manger -- I would just say, without any manger to eat out of, I think.

THE CHAIRMAN: Seriously, might not Calgary,

this intervening point, put up a case that the railway cannot give this special rate to Vancouver. Then what?

MR. FRAWLEY: I want to understand your lordship.

THE CHAIRMAN: I say, might not this intervening point try to show that this special rate to Vancouver ought not to be granted?

MR. FRAWLEY: No, it could be granted, there would be no question about that. That would be the business of the carrier and the Board, as to whether it should be granted.

THE CHAIRMAN: Yes, I know, but Calgary would say: "You mustn't grant it unless you grant us something in return".

MR. FRAWLEY: Calgary would simply point to Section 2 and say that that must be obeyed, and if good results come from the obedience to Section 2, that is it, sir.

THE CHAIRMAN: You would imply then that the special competitive rate to Vancouver could not be granted unless a similar reduction was made to Calgary?

MR. FRAWLEY: That is a quick answer, to satisfy the Section I referred to, but I am inclined to believe that Calgary would not be there.

THE CHAIRMAN: No, no, but Calgary might be there. You cannot keep it away because you have already provided that no rate shall be discriminatory against any locality.

MR. FRAWLEY: Well, it may be, but Calgary would be a necessary party to any such - -

THE CHAIRMAN: You see, even if Calgary isn't there it will be the duty of the Board itself

to consider it.

MR. FRAWLEY: Yes, quite so.

THE CHAIRMAN: Not only Calgary.

MR. FRAWLEY: Not only Calgary, but every place back of where the breaking point comes, that is right.

THE CHAIRMAN: What would be left then of your competitive rate proposal?

MR. FRAWLEY: The transcontinental competitive rate? Well, if it can satisfy these conditions, it goes in, sir.

THE CHAIRMAN: If you can, yes.

MR. FRAWLEY: And it satisfies these conditions and satisfies the further sub-section we have been discussing, and then they are permitted to put it in. As a matter of fact, my lord, looking at it - -

THE CHAIRMAN: You would then have one of these loose considerations that the public would have to make up its ^{own} mind about. You see, these are more positive, actual competition, tolls at a certain level and so on, but then you come to this loose one, "just and reasonable". Different Boards might have different views as to what is meant by that, but there it is, and then you would have your appeal to the Governor each time, I suppose?

MR. FRAWLEY: Appeal under Section 52?

THE CHAIRMAN: Yes.

MR. FRAWLEY: Yes, my lord.

COMMISSIONER ANGUS: Mr. Frawley, wouldn't the distributor in Calgary be exposed to the competition of the distributor in Vancouver even if the goods came by water?

MR. FRAWLEY: Oh, yes.

COMMISSIONER ANGUS: I mean, he has to suffer from that position being such and such a distance by rail from a port, and if the railway is only meeting the competitive water rate, is it actually making the position of the distributor in Calgary worse than before.

MR. FRAWLEY: The Calgary distributor .. has to face competition from the Vancouver distributor who brings in his goods by water.

COMMISSIONER ANGUS: Yes, and if the rail rate merely meets the water rate, has that competition become any worse, any greater?

MR. FRAWLEY: Well, it is the same of course.

COMMISSIONER ANGUS: That is why I am asking, when I speak of the dog in the manger, what is the grievance of the distributor in Calgary?

MR. FRAWLEY: Because, thanks to this road in Vancouver his distribution territory is invaded.

COMMISSIONER ANGUS: It would be invaded from the sea anyway if that rate was given.

MR. FRAWLEY: He would have to put up with that. He has no grievance against anybody so far as that is concerned unless the back haul rate is too low.

COMMISSIONER ANGUS: But I asked you just now if the rail rate had made his position any worse, and you said "No".

THE CHAIRMAN: You see, all other competition is from the sea, isn't it? If it is by sea all these things are happening anyhow.

MR. FRAWLEY: Of course, the same time.

THE CHAIRMAN: What you say on behalf of the Calgary distributor -- because he is the one you are apparently speaking for now - -

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: If the goods come around by sea, there is no railway competition. The railways have not lowered the rates and it would not be the same competition existing.

MR. FRAWLEY: Insofar as water competition is concerned, insofar as the rate is put in to meet water competition, I think it just mathematically follows, I don't think there is any question about that, but a good many of these rates to Vancouver are made to meet market competition and to that extent other considerations apply.

THE CHAIRMAN: What do you mean by market competition?

MR. FRAWLEY: Competition between two or more shippers shipping through a common point. Now, there may be - -

THE CHAIRMAN: You mean, Vancouver being the market?

MR. FRAWLEY: And Vancouver being the market.

THE CHAIRMAN: If Vancouver is the market, the goods stay there?

MR. FRAWLEY: No, they could stay there, be turned around and deep^{-sea}/distributed out of Vancouver.

THE CHAIRMAN: You are getting back to your competition, you see, to the possibility of the same goods getting there by sea at a lesser rate. Is Calgary any better off in that case?

MR. FRAWLEY: If it is water competition and the rate is made to Vancouver to meet water competition, then Calgary is in the same position, whether they come by water - -

COMMISSIONER ANGUS: Wouldn't that bring market competition too, if goods are being sold in Vancouver at a low price which can be shipped on to Calgary at the rate Vancouver-Calgary; if a low rail rate is put in to meet market competition and to enable Eastern Canadian goods to be sold at the same price, they too can be shipped back. But whether it means the market competition was present because goods were being sold cheaply in Vancouver, are they a menace to Calgary in your sense if no one is prepared to pay freight from Calgary to Vancouver and Vancouver to Calgary?

MR. FRAWLEY: I am not so certain that the same considerations apply.

COMMISSIONERS ANGUS: Well, suppose steel pipe from Britain is being sold from Vancouver and a rate is put in to enable the same pipe from Hamilton to be sold in Vancouver competitively with the British steel pipe, you say that is unfair to the distributor in Calgary because the steel pipe can be shipped back from Vancouver to Calgary by paying the rate between those two points, but the British steel pipe could have been shipped through before that market competitive rate was put in.

THE CHAIRMAN: That is, by sea to Vancouver.

MR. FRAWLEY: Well, just how that situation - -

THE CHAIRMAN: Well, perhaps that is a problem you would leave to the Board in each case under these words "just and reasonable".

MR. FRAWLEY: Well, of course that is why I would rather leave it wide than try to qualify it in the Statute itself, because I would like to make it certain, sir, that this is not in any sense an application or could be considered to be an application for a blanket rate. It is just an application which puts more of a burden upon the railways before they are allowed to violate the cardinal rule of the long-and-short-haul principle.

THE CHAIRMAN: Yes, well, this then reverses the ordinary state of things and provides for any point which is paying a higher rate, say, than a point further off that is paying a lesser one - -

MR. FRAWLEY: That is right.

THE CHAIRMAN: Complaining to the Board if he wants to?

MR. FRAWLEY: I think I would have to say that. I keep saying these intermediate points would not be there, but they certainly would complain.

THE CHAIRMAN: The Board to take notice of those.

MR. FRAWLEY: That is right, and they would perhaps be there to protect their interests in the disposition of the application itself.

Sub-Section 3 of the amendment deals with rates creating long-and-short-haul discrimination which are made because of market competition. We are not content to leave this matter as it is today -- entirely in the hands of the railroads. We have shown that market competition is an important factor in creating long and short haul discrimination. As our amendment states, we want the rights of all localities protected from the

possibility of discrimination because of rates made to meet market competition.

THE CHAIRMAN: Now, pardon me, I would like to know, are you talking of market competition between importers or producers shipping to the same market?

MR. FRAWLEY: Producers shipping to the same market. The example we had was Vernon to Toronto, Brooks to Toronto and Vancouver to Toronto.

THE CHAIRMAN: That is market competition between shippers then?

MR. FRAWLEY: Yes, my lord. Now I deal with the final part of my brief on long-and-short-haul.

THE CHAIRMAN: Pardon me a moment, I am sorry. I want to discuss that with you. This sub-section (3) is in your amendments .

MR. FRAWLEY: Yes, sub-section (3).

THE CHAIRMAN: Let us look at that. You say that no toll which has been approved or allowed under the provisions of sub-section (1) (you don't bring in 2 there), no toll which has been approved or allowed under the provisions of sub-section (1) of this Section between two points for the purpose of meeting competition flowing to or from a third point, shall unduly prejudice other regions or destinations; but isn't your point of departure rather awkward there? You see, you say:- "No toll which has been approved".

MR. FRAWLEY: Yes, my lord, and then complaint might be made. It has been approved and then it can be the subject of a complaint because of people who feel they are suffering by virtue of sub-section (3).

THE CHAIRMAN: And that is the test that would come in after the event?

MR. FRAWLEY: Yes, my lord, after the event. It might help if I gave your lordship an example.

THE CHAIRMAN: I want to know -- you say that no toll which has been approved shall unduly prejudice other regions or destinations?

MR. FRAWLEY: Yes.

THE CHAIRMAN: That is a very wide expression, "unduly prejudice other regions or destinations".

MR. FRAWLEY: If I give your lordship an example it may make it clear. There is a movement of salt from Neepawa, Manitoba, to Saskatchewan destinations; there is a movement of salt from Unity, Saskatchewan to Saskatchewan destinations.

(Page 22052 follows)

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MR. FRAWLEY: Now, there is also salt manufactured at Lindbergh, Alberta, and to enable Lindbergh salt to market in the same destination rates are given by one of the railways lower than the rates from Lindbergh to intermediate points. That is to say some intermediate point over in Alberta or Saskatchewan intermediate to the destination.

THE CHAIRMAN: That is, the intermediate pays more?

MR. FRAWLEY: To the common market, yes, the intermediate point. Suppose that Saskatoon is the destination and there is salt moving from Unity and salt moving from Neepawa, Manitoba, and now the salt moves down there from Lindbergh to the Saskatoon market, but the railways to enable that Lindbergh salt to get in there and meet that market competition from Unity and from Neepawa, will give a lower rate to Saskatoon than say Lloydminster or some intermediate point. Now, that is a rate to meet market competition. All we say is that any toll which has been approved or allowed under the provisions of this subsection (1) shall not unduly prejudice other origins or destinations.

THE CHAIRMAN: Then the question is, why was it allowed?

MR. FRAWLEY: Why was the rate allowed?

THE CHAIRMAN: Yes.

MR. FRALWEY: Well, it is allowed prima facie, as it were.

THE CHAIRMAN: Once the rate is there, allowed and operating, what do you mean when you say it shall not unduly prejudice other origins destinations? What are you going to do about it if it does?

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MR. FRAWLEY: It must not unduly prejudice other origins or destinations.

THE CHAIRMAN: I can understand that as a test for its being allowed or not, but you say once it has been allowed and approved then after all that shall not unduly prejudice other origins or destinations.

MR. FRAWLEY: Well, it simply comes down to this, My Lord. These people who would now make a complaint might not have been interested in the matter at all. The Board might have had no regard to their rights or their prejudices while they were considering the application. If they had then this section would be taken care of.

THE CHAIRMAN: Haven't they the right to complain? It would be discrimination, would it not?

MR. FRAWLEY: Yes. They would make a substantive complaint later.

THE CHAIRMAN: Why didn't you say so instead of saying "unduly prejudice other origins". What is an origin?

MR. FRAWLEY: A shipping point, any shipping point or destination. Origin only means shipping point.

THE CHAIRMAN: Any other point of shipment or destination?

MR. FRAWLEY: Of the same commodity.

THE CHAIRMAN: Yes, but why do you say shall not unduly prejudice. All you mean is this, that here is an unjust discrimination created by a rate?

MR. FRAWLEY: Yes.

THE CHAIRMAN: Under the Act to-day, has not every locality the right to appeal?

MR. FRAWLEY: Yes, I suppose it could have been taken care of that way. It is simply to make ---

THE CHAIRMAN: I am afraid if you try to take

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care of these things in too many ways, you will fall to the ground among all of the stools. To say here is a rate that has been approved and allowed after they have passed the usual tests for competitive rates, but then after it has been approved or allowed, it shall not unduly prejudice, you must mean "discriminate against" or "be unjust or unreasonable towards other localities". That is the wording you have used before?

MR. FRAWLEY: Yes. Other places shipping the same commodity or receiving the same commodity.

THE CHAIRMAN: Why don't you use the same language and then we will know what you are talking about? You have said the present Act 314 provides - you are not sure whether you are changing that or not; here "no toll shall be charged which unjustly discriminates between different localities"?

MR. FRAWLEY: Yes, My Lord.

THE CHAIRMAN: Isn't that there already?

MR. FRAWLEY: Yes sir. This simply says that a toll which has been approved must not unduly prejudice other points shipping the same commodities.

THE CHAIRMAN: Yes, that is right; and have you not already covered that when you say "no toll shall be charged that unjustly discriminates between different localities"? Here is a toll which has been charged, and this locality says, this is an unjust discrimination against us. Now, the locality might be a shipping locality or a receiving locality.

MR. FRAWLEY: Yes, My Lord.

THE CHAIRMAN: I think the Act as it is now, is very properly worded. When you use that language in one section and then in another convert it into "shall not unduly prejudice other origins or destinations" then

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one wonders what you are talking about, whether there must not be something different. Do you mean anything different than that; that no toll shall be charged which unjustly discriminates between different localities? Is that what you mean?

MR. FRAWLEY: Yes. I would just like to consult with Mr. Harries for a second. I don't know, My Lord. I am not certain whether my time is going to run out this afternoon, whether I am going ---

THE CHAIRMAN: I want to look into this because really with all this put in, you apparently cover the same thing. You are liable to run into trouble.

MR. FRAWLEY: 314-4. I see the point Your Lordship is making. I will examine this Section 314A subsection 3 in the light of 314 subsection 4. That is what you are calling to my attention. I would like to have a chance to look at that, if I have any time.

THE CHAIRMAN: Yes, I think so.

MR. FRAWLEY: Now, on page H-15, the railways have called the Commission's attention to Section 500 of the United States Transportation Act, 1920, which reads: "it is hereby declared to be the policy of Congress to promote, encourage and develop water transportation, service and facilities, in connection with the commerce of the United States, and to foster and preserve in full vigor both rail and water transportation". At page 15498 of Vol. 77, Mr. Jefferson said: "In the United States relief has generally been rejected in regard to transcontinental rates to a greater extent than in the case of other competitive rates because of the policy of Congress to afford

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protection to inter-coastal shipping".

And the Commission will understand that he means they have not been permitted to violate long and short haul rules. That is what relief being rejected means. At page 16033 of Vol. 80 of the Transcript Mr. Jefferson was asked to explain this statement. He was asked: "In other words, you feel and you say that the Interstate Commerce Commission is making it difficult for the rails to compete with water carriers. Is that correct?" A. "On transcontinental traffic". Now, let us see what the I.C.C. really does.

THE CHAIRMAN: Pardon me a moment. Are you going to argue that we should have some sort of policy of this kind here?

MR. FRAWLEY: No, My Lord. I am going to indicate there is no reason to have the fear that Mr. Jefferson expressed.

THE CHAIRMAN: We do not need any declaration of policy by Parliament?

MR. FRAWLEY: I think not, sir, no.

THE CHAIRMAN: Parliament did declare a policy when it enacted the Maritime Freight Rates Act in its preamble, you remember?

MR. FRAWLEY: Yes.

THE CHAIRMAN: You don't want anything similar here?

MR. FRAWLEY: No, My Lord. I am not suggesting anything like that. Recent cases dealing with the relationship between the transcontinental rail rates and the intercoastal rates do not confirm Mr. Jefferson's suggestion. In 1947, 268, I.C.C. 515, at page 519, the Commission said: ---The name of

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the case is All Commodity Rail Rates, 1947, 268 I.C.C. 515, at page 519, when the Commission said: they, referring to the United States Maritime Commission, stress the necessity for sharply increasing the level of the rail rates, if domestic water operations are to be supported by adequate revenues after the return to private operation. This is urged as a predicate for their interest in the minimum charges of the rail lines, rather than as a request that we require increases in rates of one type of carrier to permit another type of carrier to share the traffic which recently we have held the statute does not require; and then at that point the Commission cites the case of Citrus fruits from Florida to North Atlantic Ports, 266 I.C.C. 627 at 635; and I want to read one short passage from the case, the 1947 case which I have just submitted, the case of All Commodity Rail Rates etc. . They really relied upon what they had said in the Florida case, and in the Florida case they said this at page 635 "Counsel construes the issue as a request that we require ---

THE CHAIRMAN: Pardon me, you are reading out of a book?

MR. FRAWLEY: Yes, My Lord.

THE CHAIRMAN: Will you give me that one again?

MR. FRAWLEY: Yes, My Lord. "Counsel construes the issue as a request that we require increases for rates of one type of carrier to permit another type of carrier to share the traffic." We agree with Counsel that such is not required by the Statute.

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THE CHAIRMAN: What is the application you make of that here? How do you apply that principle?

MR. FRAWLEY: Well, I would say that there the I.C.C. took no cognizance of the needs of water carriers in recent rail rates adjustments and that is borne out by what they say in their sixty-third Annual Report. In other words, I say that the Statute there does not require any - in other words, this Statute that Mr. Jefferson was speaking of, the Transportation Act of 1920, I say it does not require that increases in rates of one type of carrier be permitted another otype of carrier - be so made as to permit another type of carrier to share the traffic. And then I call attention to two passages in the sixty-third Annual Report at page 9, the Commission says conditions in the inter-coastal field - that is water - continue to be difficult; and they then say, the operating ratio of the inter-coastal carriers increased from 98.5 to 105.9.

THE CHAIRMAN: How do you apply that to our situation?

MR. FRAWLEY: I say this, sir. This would hardly indicate that the Commission was holding up the railway rates to the coast to permit the water carriers to prosper, so that I say that that is the reason why there is no relief or so little relief from the long and short haul discrimination in the United States. Whatever the reason may be, it is not because of the effect of the rule with respect to water traffic, that is all. I am only seeking to answer the suggestion that the important thing is that there is water competition there which keeps the rail rates up.

THE CHAIRMAN: Keeps it up?

MR. FRAWLEY: Yes, keeps the rail rates up. I

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say that there are other reasons for it probably. Certainly not this water situation. Our position in connection with long and short haul discrimination is that we want adequate protection for the shipper and receiver at the intermediate point. We do not want to tie the railways' hands, and indeed the amendment that we propose will not tie the railways' hands. Our amendment will simply require that certain fundamental conditions be met before long and short haul violation is permitted.

Now, before we go on to another subject, sir, I feel I should go back ----

THE CHAIRMAN: We will adjourn for a few minutes.

MR. FRAWLEY: Very well, sir.

(Recess).

(Page 22062 follows)

MR FRAWLEY: The next topic I want to discuss, my lord, is Interline Rates, but before doing that I want to go back to page H-7, because of the statement that appears there, which reads:

"There has been an attempt to create misunderstanding about the nature" --
what I should add there is "of our position", of course; that is what it means --

"about the nature of the 'actual and compelling competition' which we indicate must be present before a long and short haul violation can be sanctioned."

Now, the misunderstanding arises in this way, my lord: The Canadian Pacific brief, at page 120 of Part II, contains this statement:

"As to the first of these, that there should be active and compelling competition at the competitive point, Canadian Pacific points out that Alberta has overlooked the fact that potential, as well as active competition is recognized by the Interstate Commerce Commission (see 218 I.C.C. 106 at p. 110 and 208 I.C.C. 327). Apart from that, the principle applied in Canada in measuring the propriety of competitive rates is identical with that suggested by Alberta."

Now, the next thing I want to call the Commission's attention to is what Mr. Harries said in direct examination, in volume 61, at page 12046. At that point I was calling Mr. Harries' attention to that statement, and Mr. Harries replied this way:

"We would like to say that the Canadian Pacific Railway has overlooked the fact that section 4 of the Interstate Commerce Act specifically provides that authorization to depart from the requirements of the

section shall not be granted 'on account of merely potential water competition not actually in existence.'"

Now, the words in the United States statute prohibit it.

"The two cases cited by the Canadian Pacific Railway Company show that the Interstate Commerce Commission considers that competition is actually in existence and not merely 'potential', even though no competitive movement has occurred."

And then Mr. Harries referred to the three cases which I have set out at page H-7.

Now, when Mr. Jefferson was giving evidence later, in volume 77 on the 16th of February, Mr. Harries having made that statement on the 7th of December, Mr. Jefferson said, at page 15482:

"It is important to examine the five principles which Alberta submits should be applied in measuring the propriety of the transcontinental competitive rates.

As to the first of these, that there should be active and compelling competition at the competitive point, Canadian Pacific points out that Alberta has overlooked the fact that potential, as well as active competition is recognized by the Interstate Commerce Commission",

and so on. Mr. Jefferson simply repeated what had been said in the brief.

Now, the only point we make, sir, is that after Mr. Harries had made it quite clear that the American statute prohibited it, and we were using the words "actual and compelling" not to eliminate what in a broad sense one may consider as potential competition but to define the term

"potential" within reasonable limits, we think that it was -- what shall I say? -- somewhat unreasonable to repeat again what had been said in the brief. Now, I have taken that much time to clear up the matter. That is what we meant when we said there had been an attempt to create misunderstanding.

Now, my lord, going on to the matter of Interline rates, which is section I of the brief:

INTERLINE RATES

The nature of this anomaly was fully outlined in the Transcript, volume 63, pp. 13200 to 13230. Our complaint concerns the charging of combination or joint through rates on hauls involving two or more railways at higher levels than charged for similar hauls on a single railway. We seek a recommendation to the effect that a uniform method of treatment of interline rates be set up - interline rates should be the same as single-line rates.

It was pointed out that:

1. The present differences between single-line and interline rates are often discriminatory against non-competitive points and in every case are disadvantageous to non-competitive points.
2. There are no adequate reasons that could possibly explain the variety of methods of making interline rates at the present time.
3. The Board has never laid down a general principle to be followed in the case of interline hauls but has confined its rulings to particular cases; the result of the Board's lack of policy has been to create discrimination between commodities.
4. The Board's 'suggestion' to the railways in 1922 that some reduction be made in interline rates was a refusal to use its powers under the Act to enforce just

and reasonable rates. (See Memorandum on Interline Rates, 1922, 12 J.O.R. & R. 372; Transcript p. 13207 (63)). Reductions in the local rates granted by the Railways were totally insufficient and represent the minimum compliance with the Board's 'suggestion'.

5. The interline rate situation can never be cleared up by use of the only tool which the Board seems willing to adopt - removal of "unjust discrimination" upon complaint. So long as in the Board's mind there is no essential difference between "unjust discrimination" and "unreasonableness", and so long as the Board confines its interest to particular cases and is reluctant to formulate and apply general standards of reasonableness in rates, combination rates as much as 60 percent above single-line rates will exist side-by-side with single-line rates. (See Transcript p. 13224).

COMMISSIONER INNIS: This new instrument that you refer to, that was a suggestion of the Board, was that a device which they have for---

MR FRAWLEY: Well, I notice the expression has been used, and quotation marks have been put around it. I am told, sir, that the Chief Traffic Officer of the Board wrote at that time to the railways pointing out certain matters, but there was no order, no accompanying order, no rule made or anything of that sort.

That reference to the transcript at page 13224 is a map showing the rate structure on cement from the Canada Cement plant at Exshaw, Alberta.

The Canadian Pacific Submission Part II at page 87 offers certain objections to the Alberta proposal.

1. It is stated that interline movements of any real volume are to-day subject to joint through rates.

As to this point, I have the following comments:

(a) the fact that there is a joint through rate tells nothing about its method of construction. It may be (and in many cases it is) merely the sum of the local rates. Our proposal goes further than merely to advocate joint through rates. It stipulates that they be constructed on single-line basis.

(b) the actual volume of traffic moving at single and interline rates respectively is irrelevant. We are dealing almost exclusively with class rates and commodity mileage rates. These rates, by their very form, are not based on volume of individual movement. They generally apply between all stations, whether any traffic has ever moved or not.

2. The Canadian Pacific Submission further states that additional interline rates would apply only to sporadic movements of traffic. This contention ignores the fact that traffic flows are often largely determined by nature of the rate structure. Where great inequalities in rates on the same commodity exist side-by-side (as in the case of combination and single-line rates) traffic naturally moves as much as possible on the lower rates. Thus, a community will draw its brick or cement over a long single-line haul, rather than a short interline haul. If there be only a slight volume of interline traffic, that could well be the effect of the lack of interline rates.

3. The Canadian Pacific also says it is always prepared to grant interline rates where "necessary". But neither in the Canadian Pacific Brief nor in the evidence of Mr. Jefferson is there any attempt to

formulate, for the information of the Commission, a consistent meaning of the all-important word "necessary". That is merely a convenient verbalism. It cannot be said that the present conglomeration of methods of constructing interline rates represents adjustments to the necessities arising from particular circumstances and conditions. Interline rates are as much a part of the rate structure as single-line rates, and should be subject to the same standard of reasonableness.

4. The Canadian Pacific has also pleaded the additional costs of interline hauls as a reason for the difference between interline and single-line rates. The costs incurred in interline hauls are in many cases no different from those in connection with single-line hauls.

THE CHAIRMAN: How do you know that?

MR FRAWLEY: I don't know, sir.

THE CHAIRMAN: Well, you say:

"The costs incurred in interline hauls are in many cases no different from those in connection with single-line hauls."

Have you any evidence on that?

MR FRAWLEY: I go on further, sir, and I say this: Often they may well be less than single-line hauls, depending on the nature of the movements. (See Southern Class Rate Investigation 1925, 100 I.C.C. 513 at 627; Transcript pp. 13217-18).

THE CHAIRMAN: What did the railways say about this question of costs besides making that general statement? Did they say anything?

MR FRAWLEY: I do not at the moment recall what answer they made to that suggestion when we made it in our

evidence. What we said there, at page 13217 of volume 63 -- we were discussing the case in 100 I.C.C., and we quote what the Commission said at page 627:

"Joint-line differentials or arbitraries rest on the theory that a joint-line haul costs more than a single-line haul. But no attempt has been made to measure or even to estimate this extra cost, and the differentials proposed are the product of unguided judgment. Nor is extra cost in physical handling always incurred. If, for instance, all lines in southern territory were consolidated under a single ownership, it does not follow that the method of operation over what are not joint-line routes would in all cases, or even in most cases, be changed materially. While joint-line hauls ordinarily involve switching operations at the junction point and sometimes the transfer from car to car of less-than-carload freight, similar operations are common in the case of single-line hauls."

The Commission's ultimate finding was:

"That no sufficient reason has been shown for joint-line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale."

That is what we rely on, sir.

THE CHAIRMAN: What are you asking for? You are asking for the same level, are you, according to mileage for interline carriage as for single-line carriage?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: They mention a differential there -- the last few words you read there. What is it they say?

MR FRAWLEY: "That no sufficient reason has been

shown for joint-line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale."

In other words, there might be---

THE CHAIRMAN: Now, just what does that mean? To what extent does that interfere with your proposal, that the distance only counts? That is what you are proposing, is it not?

MR FRAWLEY: We maintain, sir, that the rates should be the same. To give you an example, I think I used from Exshaw to Vegreville, Exshaw to Vermilion.

THE CHAIRMAN: You do not seem to agree altogether with the statement you just read, because they say the non-existence of the differential rates should be kept in view, I think, or something.

MR FRAWLEY: "Is a factor which should be given some weight in determining the level of the distance scale."

THE CHAIRMAN: You would not consider that to be a proper factor; am I right?

MR FRAWLEY: I think that has been our submission.

THE CHAIRMAN: Have you drafted an amendment, then?

MR FRAWLEY: No. We have no amendment with respect to interline rates. But I would just like to make our position quite clear now. We adhere to the proposition, sir, that the rates should not be any different on single-line hauls than on---

THE CHAIRMAN: How would you specify that in the Act? Shipments from a point on one line destined to a point on another line shall bear the same tolls as if they were on the same line continually; is that what you would

say, something like that?

MR FRAWLEY: Well, I would think so, something like that, sir. I had not gone the length of drafting any amendment for that.

THE CHAIRMAN: Well, that is what you mean, though, isn't it?

MR FRAWLEY: That is right; that is what we mean, sir.

I have this example, sir, that I perhaps might give you. The rate from Exshaw to St. Albert on the Canadian National, near Edmonton---

THE CHAIRMAN: Are both points on the Canadian National?

MR FRAWLEY: No. Exshaw is on the Canadian Pacific. That is what gave rise to the problem. It is 36¢.

THE CHAIRMAN: The rate is 36¢?

MR FRAWLEY: 36¢, sir. The rate from Exshaw to Campbell, a place in Northern Alberta -- now, the Northern Alberta is -- a different railway altogether, but for all purposes it is considered as part of the C.P.R., because the C.P.R. owns half of it -- that rate, the same mileage, is 21¢, so there is a difference of -- well, that is pretty close to the 60 per cent difference that we mention on page I-2 of our brief. Now, frankly, we go so far as to say that the rate from Exshaw to St. Albert on the C.N.R. should be the same as the rate from Exshaw to Campbell on the Northern Alberta, because when you examine it, my lord, it has to be switched from the Canadian Pacific to the Northern Alberta at Edmonton, just as the shipment going to St. Albert has to be switched from the Canadian Pacific to the Canadian National at any place, at Calgary or at Edmonton -- at Edmonton -- the same point, and we say there is no more expense involved in the one case than in the other, and the

rates should be the same.

THE CHAIRMAN: Have we been told anywhere how the two railways share the freight when there is an interlineation of this sort, when there is interlining rather?

MR FRAWLEY: No. That is one thing that we do not know, and we never know, sir. That is what they call the division sheet, the division of the proportion which one railway gets and the other railway gets. It is something which even the Board does not ask. I think if the Board asked for it they could have it, but it is something that the Board does not ordinarily concern itself with.

THE CHAIRMAN: Then in short you ask that distance alone is to prevail, no matter how many railways are involved.

MR FRAWLEY: That is right, sir, that is right.

THE CHAIRMAN: Mileage only.

MR FRAWLEY: Yes, my lord.

The plea that costs on interline hauls are higher loses most of its force when we survey the present situation and discover that these alleged costs may be either:

1. unreflected in rates; as an example, class rates between Eastern and Western Canada, or
2. represented by an addition of 1 to 2¢ over single-line hauls; for example, coal and lumber in Western Canada.
3. represented by a surcharge of as much as 60% of single-line rates; for example, cement rates in Western Canada.

In short, the present situation is unsatisfactory and cannot be permitted to continue. The railways, in defence of it - as in defence of other anomalies, have pleaded the loss of revenue involved in any change. In my submission, the controlling factor is the reasonableness of the rate, and

no shipper should continue to suffer from an unreasonable rate merely because of the general revenue need of the railway.

THE CHAIRMAN: There your standard of reasonableness is purely mileage.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: Now we have that for once.

MR FRAWLEY: That is right, sir.

I ask the Commission to recommend that rates on interline traffic be constructed in the same manner as those on single-line traffic.

Now I pass to my submission with respect to industrial location and the freight rate structure, and I begin the argument by---

THE CHAIRMAN: Can you tell us whereabouts such a provision ought to be made in the Act? You have not looked into that -- interline rates?

MR FRAWLEY: No, my lord, I do not suggest any amendment. I do call this to your lordship's attention, and I think it is sufficient: Section 38 -- I am suggesting no amendment, but---

THE CHAIRMAN: There is no amendment to give power to the Board, of course. You would make it compulsory to have this mileage prevail in the case of interline traffic?

MR FRAWLEY: Oh, yes.

THE CHAIRMAN: Now, what does 38 do?

MR FRAWLEY: Section 38 is a section which says:

"The Governor in Council may at any time refer to the Board for a report---"

THE CHAIRMAN: What has that got to do with the case?

MR FRAWLEY: I have said to your lordship I have

no specific amendment to propose, and I want this change brought about, and so I rely upon section 38, and I say that if this Commission recommended it, then the Governor in Council could by a rule or an order under section 38 communicate to the Board in such a fashion that this new principle in the construction of interline rates would be adopted.

THE CHAIRMAN: Well, isn't that a tremendously roundabout way to go about a thing? Why not put it right in the Act?

MR FRAWLEY: Rather than submit an amendment, sir?

THE CHAIRMAN: Well, this is a section where the Governor in Council asks the railway to investigate and report on something usually -- that is what it means -- in the general revision which has now been ordered. I do not understand. You would have the Governor in Council ask the Board to report on this question of interline traffic.

MR FRAWLEY: The manner of constructing interline rates, yes, my lord.

THE CHAIRMAN: The manner of constructing? Why can't we know and say what it should be? That is what we are here for.

MR FRAWLEY: I say that, sir. It should be constructed in the same manner as single-line.

THE CHAIRMAN: That is not what you say at all. You say that the Governor in Council should make a reference to the Board and have them make an inquiry about it. Well, we are here to hear you, and if this proposition that you put forth is proper to be adopted, then it would have to go in the Act.

MR FRAWLEY: Well, my lord---

THE CHAIRMAN: In fixing rates on traffic originating on one line and terminating on another, the same rate

shall prevail as if the traffic was carried wholly and continuously on one line.

MR FRAWLEY: Well, the way your lordship puts it, it seems to be quite simply accomplished, and I had so many amendments that I should not have been shy of another one; but, frankly, I had not originally contemplated the preparation of an amendment in this case, and so when I was putting my notes together for the last time I left it as it was.

Now if I may stop, sir---

THE CHAIRMAN: That is what you wanted, is it not?

MR FRAWLEY: That is what I wanted.

THE CHAIRMAN: There is no question about that; there is no question about this one thing, that you want the toll charged on goods of any description originating on one line and terminating on another line to be the same, mileage considered, as if it had originated and terminated on the one line.

MR FRAWLEY: For the same mileage.

THE CHAIRMAN: For the same mileage.

MR FRAWLEY: That is right.

THE CHAIRMAN: Well, that is easily said, and it should go into the sections of the Act which provide the rules that cover the fixing of rates.

MR FRAWLEY: I certainly cannot disagree for an instant with what your lordship says, and I think it would not be too difficult a matter to submit a short amendment to take care of this, sir.

THE CHAIRMAN: A very simple matter.

MR FRAWLEY: Now I would like to pass to what I have to say about industrial location and the freight rate structure, and I take it that the references to the text of the brief, the evidence in chief and the cross-examination

will all be incorporated in the record, and the amendment to the Act will be found in volume 108 at page 20009.

INDUSTRIAL LOCATION AND THE FREIGHT RATE
STRUCTURE

Text of Brief to be found - Vol. 55, p. 10540 to 10603

Evidence-in-Chief:

Stewart - Vol. 55, p. 10625 to 10664

Harries - Vol. 55, p. 10664 to 10754

Vol. 56, p. 10755 to 10828

Cross-Examination:

Stewart - Vol. 56, p. 10828 to 10885

Harries - Vol. 56, p. 10890 to 10915

Vol. 57, p. 10921 to 11073

Vol. 58, p. 11080 to 11107

Amendment to Act: Vol. 108, p. 20009.

One of Alberta's major economic disadvantages is the lack of secondary industry. In our submission on Industrial Location we noted that there are three economic factors responsible for "the persistence of the concentration of industry outside the Prairie Region" (p. 10640, Vol. 55); these three factors are:

- (1) The imperfect competition in industry (P. 10640 & 44).
- (2) Economies of scale (p. 10645).
- (3) Transfer costs (p. 10645).

We made it clear that imperfect competition and economies of scale were outside the scope of submissions we were making on this subject of Industrial Location in Alberta. See p. 10643 and 10645, Vol. 55. The third factor - transfer costs - is the significant consideration as far as this Commission is concerned.

(Page 22078 follows)

We divided our submission on transfer costs into two broad parts. The first part was the relationship between raw material and finished product rates. The second part dealt with market rates. I hope there is nothing confusing about this. The first part of our Brief dealt with the relationship between raw material and finished product rates, and that is what was discussed at considerable length, but the second part of the same Brief, dealing with industrial relations and the freight rate structure, dealt with market rates.

Under the general heading of Market Rates we dealt with the locational effects of:

- (1) Long-and-short-haul discrimination.
- (2) Distributing rates.
- (3) Agreed charges.
- (4) Stop-off and in-transit privileges.
- (5) Rate groups.
- (6) Developmental rates.
- (7) Interline rates.

Such discussions as I propose to raise on these matters will be found elsewhere in my argument.

Coming back to the main burden of this particular Brief, in the matter of raw material and finished product rates our position is that today in certain instances the relationship between the rates on raw material and the rates on finished products is such that the movement of raw material is encouraged at the expense of the movement of the finished product made from those raw materials.

In those instances the freight rate structure encourages the movement of raw materials out of the

areas which produce them and, consequently, the freight rate structure discourages the location of factories to process that raw material in the producing area. From a regional and a national and a transportation standpoint, this is wrong.

We believe it is to the general advantage if the raw material producing areas are permitted to process more of their raw materials at the source. That is the essence of our proposition. At the same time, we are not asking that the freight rate structure should offset other forces operating to take raw materials out of our province for processing.

THE CHAIRMAN: What do you mean by "other materials"?

MR. FRAWLEY: Well, if there are any other reasons that operate to take the raw materials out of our province for processing, and the matters we were discussing, if I go back to J-1, that is, imperfect competition and economies of scale. Now, it may be factors which operate to take our raw material out, and of course we are not concerned with giving those matters - -

THE CHAIRMAN: Can you give an instance of what you have in mind when you use this phraseology:-

"...we are not asking that the freight rate structure should offset other forces operating to take raw materials out of our province for processing.?"

MR. FRAWLEY: Well, I would like to give your lordship an example.

THE CHAIRMAN: Do you oil in mind there or not?

MR. FRAWLEY: No, it is these very things. As we say here, we are not asking that the freight rate structure should offset other forces. Now, if there are forces that would move our raw material, say, livestock that we talk so much about, if there are other forces that take livestock out, we are not complaining about that.

THE CHAIRMAN: What other forces might there be? That is what I want to know.

MR. FRAWLEY: Now, this is rather a good example, wool, something we produce in Alberta in some quantity. Now, wool has to be mixed with Australian wool and wool from other parts of the world. From Alberta wool naturally finds its way down to the processing plants of Eastern Canada, and those are forces excluded from the freight rate structure, and of this we make no complaint.

THE CHAIRMAN: Is there any processing of wool done in Alberta?

MR. FRAWLEY: ^{Yes.} In fact there is one plant in the southern part of the province which has had a rather varied career. Right at the moment I don't know whether it is successful or otherwise. I know that the Alberta Government, through one of its development branches put some money in some years ago and at the very moment I couldn't tell you -- it may be getting along well, but it is a small operation: one of the other symptoms that we should do more with our wool, because there is a great deal of sheep raised on the ranges of southern Alberta, but these must be other forces that operate to take raw wool out of our province.

THE CHAIRMAN: At the present time you are not sufficiently concerned about the processing of wool in Alberta to oppose its export?

MR. FRAWLEY: That seems to be the situation.

THE CHAIRMAN: At the present time.

MR. FRAWLEY: At the present time, but as we grow with the new freight rate structure that may come into being.

We say that transportation-wise, any area should have at least an equal opportunity with all other areas to process raw material which such area originates. The rate relationship should not discourage producer location. As Dr. Angus put it at page :-

"You want neutral or better, rather than better than neutral".

The present freight rate structure militates against the establishment of secondary industry in Alberta. As a practical illustration we used the livestock and packinghouse products rates. We also referred to the rates on crude oil and on petroleum products, as well as to the rates on pulp wood and on pulp and paper. See page 10702-107 3, Vol. 55; page 11086, Vol. 58. The same problem of a rate relationship arises in connection with these commodities in Alberta. In other parts of Canada other commodities would pose similar problems.

THE CHAIRMAN: In the same way for the other part of Canada?

MR. FRAWLEY: That is right, my lord.

To deal with the case of livestock, we found after study that 40% of the cattle and calves which are marketed from Alberta farms are slaughtered outside the

province. A major factor in this undesirable situation is the present freight rate structure. We illustrated that by several comparative movements. For example we showed the relative cost of moving a steer from Carstairs, Alberta, to Vancouver for processing, as compared to the cost of moving it from Carstairs to Calgary for processing and shipping the meat to Vancouver. (Reference page 10562, 10567). This example showed that for meat consumed in Vancouver it cost \$3.00 more to process the animal in Calgary than to process it in Vancouver.

That is the heart of the problem. The attitude of the Board of Transport Commissioners is important. We discussed the cases at pages 10581 to 10589. The Board's attitude in the matter of rate relationships has been its attitude in so many other problems -- negative. The Board has failed to discharge the duty which is inherent in its responsibility to fix just and reasonable rates for each and every commodity carried.

THE CHAIRMAN: Just a minute, you said "just and reasonable". You are bringing that in there?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: All right.

MR. FRAWLEY: The Board has said that it is not "the arbiter of industrial policy". That has reference to what the Board said in the 21% Case.

THE CHAIRMAN: Do you or do you not agree with the Board in that?

MR. FRAWLEY: What we have to say, sir, follows. I say one thing, I would rather have the Board than the railways.

THE CHAIRMAN: I know, but that is not a practical answer. You see, the railways, you go on to show there, do have power and do take into consideration these economic factors, industrial factors and so on.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: And so far the Board says:-

"Now, we have no power to do that, it is not our duty. We are here to fix rates, just and reasonable rates." Now, do you want any change made?

MR. FRAWLEY: No, what we say is, we are going to give them -- our new amendment is going to give them a degree perhaps of the arbiter. The Board has said that it is not "the arbiter of industrial policy". Railways are not slow to act as arbiters of industrial policy when such action appears to be in their own interest. The Commission will recall the example of the Agreed Charge Application of McColl-Frontenac. In that case one of the reasons that the railways had given to the Board to justify granting the McColl-Frontenac an agreed charge was to:-

"Avoid the construction of a refinery by the McColl-Frontenac Company Limited at a point in the Prairie Provinces...."

(page 10772, Vol. 56).

We do not propose to make the Board an arbiter of industrial policy. But the present unsatisfactory situation must be remedied. It may be, as the railways have argued, the Board could under existing legislation grant relief from this discrimination which we have called to the Commission's attention.

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THE CHAIRMAN: Would you pardon me a moment.
You say:-

"It may be, as the railways have argued,
the Board could under existing legislation
grant relief from the discrimination".

MR. FRAWLEY: From this discrimination -- "the"
is just as good.

THE CHAIRMAN: The railways say that, you say.
You say:-

"It may be, as the railways, have argued,
that the Board could under existing legisla-
tion....".

MR. FRAWLEY: Well, we must have reference to
that.

THE CHAIRMAN: "....grant relief from the
discrimination which we have called to the Commission's
attention", although the Commission says apparently
that it cannot.

MR. FRAWLEY: That is right, sir.

THE CHAIRMAN: Where does the railway say
that?

MR. FRAWLEY: I would like to find that.
I am afraid I will have to come back to it for your
lordship.

THE CHAIRMAN: I presume if the railways
said that, they must have given us a reference to the
Railway Act somewhere.

MR. FRAWLEY: I take it so, sir.

THE CHAIRMAN: And the railways according to
you talk of the existing legislation?

MR. FRAWLEY: That is quite so.

• • •

1. *Chlorophyll a* (Chl *a*)

THE CHAIRMAN: The Board could under existing legislation grant relief from the discrimination against - -

MR. FRAWLEY: Yes, I think, sir, and I would investigate that.

THE CHAIRMAN: I would like to know where the railways said that.

MR. FRAWLEY: I will go on and I will look that up for your lordship. I go on to say that the fact remains that the Board has never accepted as a guiding principle the proposition that the freight rate structure should not discourage producer location of industry. For this reason, we think it imperative that the statute specifically direct the Board on this point.

To that end, we propose the following amendment. I have added a section after 321 which I call 321A.

THE CHAIRMAN: Section 321 deals with the apportionment of toll for carriage by land and water?

MR. FRAWLEY: Yes, I don't know that there is any particular importance in putting it in after 321, but it goes in there.

THE CHAIRMAN: It deals with a different subject from 321 doesn't it?

MR. FRAWLEY: Yes.

THE CHAIRMAN: All right then, go on.

MR. FRAWLEY: It is really an addition.

THE CHAIRMAN: It will be new law.

MR. FRAWLEY: Yes, my lord, because it is before we go to the next group called "Tariffs, General Provisions". Now, Section 321A reads:-

SECTION 321A:-

Relationship
between tolls
on raw materials
and finished
products

The Board shall, upon application by an interested party or parties prescribe or direct the company to establish tolls on raw materials and tolls on products made in whole or in part from such raw materials in such manner that the relationship between the tolls on raw materials and the tolls on products made therefrom shall not per se discourage the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials:

Provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship between the tolls discourages per se - -

THE CHAIRMAN: Who have you in mind as the applicants there?

MR. FRAWLEY: Some company that is interested in processing livestock, for instance.

THE CHAIRMAN: Near the source of supply?

MR. FRAWLEY: Yes, my lord.

.....provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship between the tolls discourages per se the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials; and provided further that any such relationship

between the tolls shall not result in an unreasonable difference between the tolls so prescribed or established on the raw materials and the tolls on similar raw materials or between the tolls so prescribed or established on the products and the tolls on similar products.

THE CHAIRMAN: Just a minute, now. That is quite an amendment, and I think it is time to adjourn anyhow.

I forgot to say that we will sit tomorrow but will not sit on Wednesday.

---At 4:45 p.m. the Commission adjourned until tomorrow, Tuesday, May 9th, 1950, at 10:30 a.m.

A.R.

Canada
ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

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ROYAL COMMISSION ON TRANSPORTATION

Tuesday, May 9, 1950
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO
TUESDAY
MAY 9th, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN
HAROLD ADAMS INNIS - COMMISSIONER
HENRY FORBES ANGUS - COMMISSIONER

G. R. Hunter
Secretary

COUNSEL APPEARING:-

F.M. Covert, K.C.	}	Royal Commission on Transportation
G.C. Desmarais, K.C.		
H.C. Friel, K.C.	)	Canadian National Railways
C.F.H. Carson, K.C.	}	Canadian Pacific Railway
F.C.S. Evans, K.C.		
J.J. Frawley, K.C.	)	Province of Alberta
J. Paul Barry	)	Province of New Brunswick
C.W. Brazier	)	Province of British Columbia
Frank D. Smith, K.C.	)	Province of Nova Scotia
P.J. Lewis, K.C.	)	Province of Newfoundland

Ottawa, Ontario,
Tuesday, May 9, 1950.

M O R N I N G S E S S I O N

ARGUMENT BY MR. FRAWLEY (Cont'd)

THE CHAIRMAN: All right, Mr. Frawley.

MR. FRAWLEY: My lord, I had reached page 6 of section J of my argument last night, but before resuming at that point I should like you to turn back to page G-6 because I should like to clear up a matter that we were discussing at that point yesterday.

THE CHAIRMAN: What is the page?

MR. FRAWLEY: G-6.

THE CHAIRMAN: What is the subject?

MR. FRAWLEY: Competitive rates; at page G-6 there appears the subsection which I propose.

THE CHAIRMAN: On the long and short haul?

MR. FRAWLEY: No, the section on competitive rates. At that page there appears the subsection which I would add to section 332. Your lordship may remember we got into a discussion yesterday as to whether or not both of these obligations we were imposing upon the Board, first to see that the competitive tolls are no lower than necessary to meet actual and compelling competition, and then also to see that such tolls more than cover the additional costs of the movement to which they apply were suitable amendments. Let me say first this morning that if the last phrase were put first and it were made to read that the Board by continuous examination must satisfy itself that the competitive tolls are more than covering the additional costs of the movement to which they apply, and are no lower than necessary to meet actual and compelling competition, I think it would be satisfactory.

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All that does, sir, is to put my principal point first. Therefore I would now say that the duty of the Board under this subsection would be that it must examine to see (1) that the tolls are compensatory, and if the tolls are found to be not compensatory the tolls are disallowed and there is no further examination; (2) if the tolls are compensatory the subsection would impose an obligation on the Board to see that the tolls are as compensatory as possible, to see that they were bringing in as much revenue as possible, and that is because we say that they must see that they are no lower than necessary to meet competition. I think when we keep in mind that obligation that they must see that these tolls are as compensatory as possible -- that is just a phrase of mine but it conveys what I have in mind and it raises the whole question of course that was raised yesterday, namely will our railways not be sufficiently alert to do this themselves?

In that regard I think I should just call attention to what happened recently. I think it might be informative to convey to the Commission what my views are in that respect. In September and November of 1947 the railways proposed to increase all competitive rates by 30%. As a matter of fact, they filed tariffs with the Board of Transport Commissioners increasing all of their competitive rates by 30%. That was during the course of the 30% case, and before the case was finished. The provinces took the position that it was not right in those particular circumstances to take those rates out of the general rate case and to impose that increase. Therefore we protested. We made an application actually to the Board to disallow those rates, to suspend them, and they were suspended.

THE CHAIRMAN: Why did you do that?

MR. FRAWLEY: We simply said at that time they had been submitted to the Board, and that it was not proper for the Board to permit competitive rates to be lifted out of their total consideration, and the Board agreed with us.

THE CHAIRMAN: How did their increase by the railways lift them out of consideration?

MR. FRAWLEY: It would have removed them entirely from the rate case. They then would have made an increase on the competitive rates alone, and they would have simply left before the Board the standard rates and the special non-competitive commodity rates. That is all that would have been left. In any event, we took that position and the Board agreed with us, and the Board suspended those rates.

THE CHAIRMAN: Then they remained low?

MR. FRAWLEY: They remained as they were. In April, 1948, the Board delivered its judgment and authorized a general increase of 21%, and by a special provision in their judgment they released the railways from the prohibition or suspension order which they had made in the previous November. The railways were free to increase their competitive rates as high as they wished so long as they did not exceed the ceiling. They had said they were going to increase them by 30%. In fact, I think at this point I should read what Mr. O'Donnell, speaking for the Canadian National Railways, had to say at that time. He said at page 14115 of the transcript of proceedings in the 30% case before the Board of Transport Commissioners:

"Now, Mr. Knowles told your Board and Mr. Jefferson said the same thing; we are of

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the opinion that we could increase all rates ^{the} 30%, including/competitive rates, and that our competitors will be delighted if we do so because they are working under the same difficulties as we are, their costs have gone up just as ours have, and they said their considered opinion was that they could increase those rates by 30% and still hold the traffic."

When Mr. O'Donnell said "they" it seems pretty clear he was referring to Mr. Knowles and Mr. Jefferson who said that they could increase these rates by 30% and hold the traffic.

In fact, sir, when they were released and were free to increase competitive rates they increased them by just 21%. They did not increase them by the 30% that they said they could increase them. I only point that out to say that I am not satisfied that at all times the railways increase competitive rates as much as they can. If they do then the obligation which this subsection would place upon the Board would not be a very great burden. It seems to me that it will be much more satisfactory if the Board is expected and asked to make such examination as will do two things, to see that they are compensatory, and then if they are compensatory to follow it further and to see that they are as compensatory as they can be.

I want to pass to another matter that I discussed yesterday, and I would ask you to be good enough to turn to page H-6 which is the new section 314A which we propose in connection with the long and shorthaul matter. As the Commission will remember -- I think it was your lordship raised the question yesterday as to whether we needed subsection 3 which we now propose because of the fact that section 314, subsection 4 of the present

Railway Act --

THE CHAIRMAN: Pardon me a moment; did you say H-6?

MR. FRAWLEY: H-5. The section I propose is reproduced there. I would ask you to direct your attention to subsection 3 which provides:

"No toll, which has been approved or allowed under the provisions of subsection (1) of this section, between two points for the purpose of meeting competition applying to or from a third point, shall unduly prejudice other origins or destinations."

(Page 22095 follows)

In view of the provision contained in section 314, sub-section 4 which reads as follows:

"No toll shall be charged which unjustly discriminates between different localities",
I am now satisfied to strike out sub-section 3 from section 314A as it appears.

Then if you would be kind enough to pass to page J-5, there is another matter that I should like to point out. At that page a question arose. At that page we said:

"It may be, as the railways have argued, the Board could under existing legislation grant relief from this discrimination which we have called to the Commission's attention."

I may say that I am discussing the matter of rate relationships and their effect on industrial location. The question was raised, and I told the Commission that I would look that matter up. I am now calling the Commission's attention to Volume 57, page 11066 and 11067. At that time Mr. O'Donnell was cross examining my witness, Mr. Harries. At page 11066 Mr. O'Donnell said:

"Q. Will you agree upon the provisions of the section that it is possible for them to do that --"
Referring to the Board.

"---because the powers in that section are more broad and there are virtually no restrictions on the Board --"
By the way, I should say that Mr. O'Donnell was calling the witness's attention to section 325, sub-section 5, and he was saying this. I will read it again:

"Q. Will you agree upon the provisions of the section that it is possible for them to do that because the powers in that section are more broad and there are virtually no restrictions on the Board with respect to what it must consider when arriving at just and reasonable rates?

"A. We agree, Mr. O'Donnell, that the powers of the Board today would probably allow them to do almost anything in this regard as to what we suggest. However, the broad powers we suggest that, in fact, they have not done --"

I take it perhaps it should be "however broad the powers".

-- we suggest that, in fact, they have not done those things and our recommendation is that they should consider those in the manner in which we have stated or suggested."

THE CHAIRMAN: Who was speaking?

MR. FRAWLEY: My witness was speaking there in answer to Mr. O'Donnell. In other words, Mr. O'Donnell and the witness were agreeing that under the provisions of the Railway Act now, section 325, ^{with} that wide power which permits disallowance ^{or} which imposes upon the Board the power to fix just and reasonable rates and to disallow any rate that is unjust and unreasonable, probably there is there an over-all general power to do that.

THE CHAIRMAN: To do what?

MR. FRAWLEY: To fix these rate relationships which we ask in connection with our industrial location brief which was put in when this question came up.

THE CHAIRMAN: Do you mean that the Board has power to take economic and industrial questions into consideration?

MR. FRAWLEY: My lord, it is not as broad as that.

THE CHAIRMAN: Always remember ^{ing} that they have disclaimed that.

MR. FRAWLEY: Yes. They have said that they did not wish to be in that position.

THE CHAIRMAN: Did not wish to be.

MR. FRAWLEY: That they were not an arbitrator of industrial policy. That is right, my lord; so it seems that even though the powers are there --

THE CHAIRMAN: What are there?

MR. FRAWLEY: Assuming that the powers be there under section 325 to look at these rate relationships with regard to raw material and the finished product - assuming that power is there-but because they have disavowed it, they have said they were not arbitrators of industrial policy and they might regard that as arbitrating industrial policy. Because of that attitude and because, though it has the power in Section 325, it is only very broad general power, we suggest that the matter can be much more advantageously dealt with by the section that we suggest. That is where the matter ends.

I come then to where I left off yesterday where I was discussing this section on page J-6, this new section 321A. Oh yes, my lord, I am reminded that there is one more matter to which I would like to refer, if you will bear with me. There is one matter that I wanted to touch on before I went on with my brief. That is in section I. Section I is a section which deals with interline rates. As we were concluding that section yesterday, and I was discussing it, the question arose whether or not there should be a proposed amendment to take care of what we have in mind in connection with interline rates. I told the Commission yesterday that I did not propose an amendment. I have reconsidered the matter and I have now an amendment to propose.

At the present time, my lord, there are inter-line rates in Western Canada on lumber and coal, and those interline rates are the single line plus one cent; I think it is a cent and at most two cents. We are not dissatisfied with that. I mean, that has been going along

That has been satisfactory apparently over the years. But the railways have just done nothing at all about cement, which is another commodity in the same situation as coal and lumber; and there may be others. In any event, to bring the matter to a head, and to indicate to this Commission our wishes in the matter, and what we request, I now propose to add this proviso to Section 336 sub-section 1. Section 336 reads as follows:

"Where traffic is to pass over any continuous route in Canada operated by two or more companies, the several companies shall agree upon a joint tariff for such continuous route, and the initial company shall file such joint tariff with the Board, and the other company or companies, shall promptly notify the Board of its or their assent to and, concurrence in such joint tariff."

The proviso simply says:

"provided that the tolls to be charged in such tariffs shall be the same as the tolls charged for the same distance for the same description of traffic over the lines of one company."

THE CHAIRMAN: Why do you leave the factor of agreement in it, then? You say "they shall agree".

MR. FRAWLEY: Yes, they shall agree.

THE CHAIRMAN: They cannot agree to anything else; according to your amendment, they cannot agree to anything else but what you say.

MR. FRAWLEY: Yes. That is right. That would be a condition of what they would agree to in establishing the general tariff. That is right.

THE CHAIRMAN: Why do you call that an agreement? Do you not simply mean that in the case you gave us yesterday, the tariff should be as you say, for the mileage irrespective

of the change of railways?

MR. FRAWLEY: Yes. I was not intending to interfere with the technique laid down here. It is that they shall agree upon a general tariff.

THE CHAIRMAN: They shall agree; but they are not allow to agree to anything except one thing. Would you call that an agreement?

MR. FRAWLEY: I take it that the main purpose of the agreement is to divide the tolls, of which the section says nothing. There is to be an agreement, I take it, to divide the tolls. I do not think we can dispense with agreement.

THE CHAIRMAN: They may agree if the liked, for the Act provides, ^{that} in the case you gave, the tolls shall be the same as if the two points, the point of departure and the point of destination, were on the same line. Then the railways can agree to divide the revenues as they like, can they not?

MR. FRAWLEY: That is right.

THE CHAIRMAN: Is that not what you want to provide?

MR. FRAWLEY: Yes, I do.

THE CHAIRMAN: Is it not very cumbersome and misleading to leave the Act as it is, saying that when they agree - as if they might not agree - then the agreement, you would say, shall consist of only one thing. Suppose they never get together and do not agree?

(Page 22101 follows)

MR FRAWLEY: Well, my lord, there must be a joint tariff; that is almost a necessity. There must be a joint tariff, because the two lines of railway are used.

THE CHAIRMAN: Why not say what you want to say, that the joint tariff shall consist of the same toll from one point to the other for the shipment where carried continuously on the same line ?

MR FRAWLEY: I think, my lord, that is exactly what I have said here in this proviso.

THE CHAIRMAN: You have said it in such a queer way, it seems to me. You first say they agree, then they agree and they file a joint tariff, then later on you find it is no agreement at all, because they can only file the one thing, and that is, as you say:

"The tolls to be charged in such tariffs shall be the same as the tolls for the same distance for the same description of traffic over the lines of one company."

MR FRAWLEY: My lord, isn't it the case of the statute making a term for them upon which they must agree? Whatever else is in their agreement, this is one proviso that must be in the agreement; the statute says so.

THE CHAIRMAN: The only agreement which the Act considers is a joint tariff to be paid by the shipper.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: The Act does not say anything about how they are going to divide the spoils.

MR FRAWLEY: No, no.

THE CHAIRMAN: Now, that is the agreement -- agree upon a joint tariff between the two lines.

MR FRAWLEY: That must be, because the two roads are being used.

THE CHAIRMAN: That is the only agreement the sec-

tion contemplates, the joint tariff. Then you say if they do agree on a joint tariff it must be this tariff. Why don't you simply say it must be this tariff anyhow? However, perhaps you had better leave it, Mr. Frawley.

MR FRAWLEY: It seems to me, with respect---

THE CHAIRMAN: Well, leave it.

MR FRAWLEY: Very well, my lord.

I was at page J-6 discussing this new section, which is to provide for the establishment of these rate relationships:

The principle upon which this amendment is founded is that weight-losing materials should be processed close to the point of production. That principle has never been denied by any authority on the subject.

THE CHAIRMAN: Well, what is your amendment? We have not read it, have we?

MR FRAWLEY: We went over it yesterday, sir. We might perhaps go over it again.

THE CHAIRMAN: What section is it.

MR FRAWLEY: 321A. It is an entirely new matter, sir.

THE CHAIRMAN: You said it has no connection with 321.

MR FRAWLEY: No, not really, sir; just put in there as a convenient place. It reads:

"The Board shall, upon application by an interested party or parties prescribe or direct the company to establish tolls on raw materials and tolls on products made in whole or in part from such raw materials, in such manner that the relationship between the tolls on raw materials and the tolls on products made therefrom shall not per se discourage the processing, manufacture

or other conversion of such raw materials at or near the point of production of such raw materials:

Provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship"---

THE CHAIRMAN: Pardon me. Who is the applicant?

MR FRAWLEY: The applicant would be the processor, let us say, of livestock in Alberta, wanting to process livestock at the point of production.

"Provided that the onus shall be upon the applicant to satisfy the Board that the existing relationship between the tolls discourages per se the processing, manufacture or other conversion of such raw materials at or near the point of production of such raw materials; and provided further that any such relationship between the tolls shall not result in an unreasonable difference between the tolls so prescribed or established on the raw materials and the tolls on similar raw materials or between the tolls so prescribed or established on the products and the tolls on similar products."

Now, I discuss that---

THE CHAIRMAN: Pardon me a moment. I do not think I have ever seen that word "discourage" in legislation --

" . . . the tolls . . . shall not per se discourage" --- you mean, hinder, hamper, prohibit.

MR FRAWLEY: Well, discourage, prohibit---

THE CHAIRMAN: I have never seen the word "discourage" used in an Act. Some people are more courageous than others, you see.

MR FRAWLEY: Some people are more easily discouraged, and so on, yes, my lord. Well, it seems to me that when we have in mind the principle, the economic principle that we are concerned with, that word "discourage" is--

THE CHAIRMAN: It is a discrimination; that is what you really have in mind, isn't it?

MR FRAWLEY: Oh, yes, but I could not substitute the word "discriminate".

THE CHAIRMAN: You see, the word "discourage" has a moral meaning. One rate might discourage one man, and it might take a higher rate to discourage another man.

MR FRAWLEY: Oh, I think it would have to be looked at purely objectively to see whether the effect---

THE CHAIRMAN: Well, I am sure you can find a better word than "discourage".

MR FRAWLEY: Well, I will mark that word, sir, and see.

THE CHAIRMAN: I do not remember ever having seen such a word in legislation.

MR FRAWLEY: Well, I would not question that, sir, but this is an attempt to put something into legislation---

THE CHAIRMAN: Suppose you have two intending processors and one of them is anxious to acquire the whole field and the other person is not; all he can say is, "I am not discouraged."

MR FRAWLEY: Well, your lordship is bringing the human element in there.

THE CHAIRMAN: No, you bring it in when you use the word "discourage".

MR FRAWLEY: Well, no, because we are not speaking about discouraging the processor; we are speaking about discouraging the processing.

THE CHAIRMAN: How would you discourage the processing?

MR FRAWLEY: Well, if the effect---

THE CHAIRMAN: Well, anyhow, try to find something.

MR FRAWLEY: Yes; I would like to develop it as I

go along, sir.

THE CHAIRMAN: Then secondly: "And provided further that any such relationship between the tolls" -- using "any", that is not proper -- however -- "any such relationship shall not" -- you mean "no such relationship shall", I suppose.

MR FRAWLEY: And provided further that any such relationship that has been established by the Board shall not result in an unreasonable difference.

THE CHAIRMAN: It is not usual to use the word "any" with a negative in legislation.

MR FRAWLEY: Well, yes, it could be "no such relationship shall result," yes, my lord; that could very well be -- "no such relationship shall result".

THE CHAIRMAN: "Between the tolls"---

MR FRAWLEY: "So prescribed."

THE CHAIRMAN: "And provided further that . . . shall not result in an unreasonable difference." Now, what is an unreasonable difference?

MR FRAWLEY: My lord, I have that developed two or three pages on. I take that proviso---

THE CHAIRMAN: Well, you see, Mr. Frawley, when you put words in an Act, there is no use developing that here; they must be clear, they must be concise, you see.

MR FRAWLEY: Well, whether the words are precise or not, I think, my lord, with respect, that they are precise, but I can tell you what they intend to do, and then that might--- the intention is, sir, that if a relationship has been established, and say a rate---

THE CHAIRMAN: What relationship?

MR FRAWLEY: The relationship between taking meat and livestock; the relationship is established and a 25¢ rate is put on the raw material going into the plant, then it is

found that that 25¢ rate is much lower than the rate on analogous raw materials, much lower, there is a difference there, then the rate relationship goes out, my statute does not operate at all; there is no rate relationship established. That is why it is in as a proviso. It affects the operation of the principal part of the section. So in that instance we say that this rate relationship must not be such that it results in a difference between the rate that has been established to satisfy the relationship and the rate on an analogous raw material. In other words, there is no intention to try to make this thing work regardless of consequences, and it is a concession to the fact that there may be results eventuate where the relationship could not be established. That is the purpose of the proviso, sir.

(Page 22108 follows)

THE CHAIRMAN: You mean that the producers of the raw material might want to ship elsewhere?

MR. FRAWLEY: The producers might want to ship elsewhere, that particular rate relationship, but the rate established of 25¢ so as to permit the processing at the point of production, it would require 25¢; and even if we found that 25¢, that other raw material was moving not into that plant - -

THE CHAIRMAN: What do you mean by "other raw material"?

MR. FRAWLEY: Well, other raw material not moving in for processing.

THE CHAIRMAN: Do you mean of the same - -

MR. FRAWLEY: Of analagous kind, and it was 50¢.

THE CHAIRMAN: What do you mean by analagous kind, the same kind of raw material?

MR. FRAWLEY: Yes.

THE CHAIRMAN: You mean cattle?

MR. FRAWLEY: Cattle for instance, or hogs, that sort of thing, but we find that the rate on the similar raw material, other cattle not moving in in this relationship was higher than that, 50¢ compared to the 25¢ which had been established or was about to be established to satisfy the relationship. Then the thing would go and it would not be established under the Section 2, and things would operate as they are today, that is all.

THE CHAIRMAN: Well, isn't the trend of what you are asking for to raise rather the freight on raw materials and to decrease that on the finished product, isn't that so?

MR. FRAWLEY: That might be one of the consequences, sir.

THE CHAIRMAN: Isn't it what you really want?

MR. FRAWLEY: Well, I can't say it is what I want, but I say I am not alarmed that it should result in that.

THE CHAIRMAN: But it might so result otherwise?

MR. FRAWLEY: Yes, it might result in that, yes, sir, and there was quite an effort, I might say, by my friends of the railway - -

THE CHAIRMAN: Some time ago when we discussed this I thought your complaint was that the rate on raw material was lower than it ought to be in respect to the rate on the finished product?

MR. FRAWLEY: Well, I don't think, my lord, I ever said that, because my case is only put on the ground that I want it examined and I have not any conclusions.

THE CHAIRMAN: But you said you would be willing to concede an increase in freight on the raw materials?

MR. FRAWLEY: I would be willing to concede an increase on raw materials getting in for processing in plants in Alberta.

THE CHAIRMAN: Supposing it is necessary to establish your relationship on the raw material, to be figured at 50¢, you say.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: And you found that other shippers of those raw materials want a rate lower than that, 25 or 30, then what would you do?

MR. FRAWLEY: Want a rate?

THE CHAIRMAN: Lower, because it is in their interest to get as low a rate as possible, isn't it, or, for instance, all the producers of cattle are not in Alberta.

MR. FRAWLEY: That is right, my lord.

THE CHAIRMAN: A great number are in Saskatchewan?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Well, they are interested, so far as I know, to get off in the American market, the Eastern market. I asked Mr. MacPherson. They don't want the tariff on their raw material increased. Now, you do wish that tariff to be handled so that the raw material will rather be shipped to Calgary, for instance, isn't that so?

MR. FRAWLEY: Yes, to plants in Alberta.

THE CHAIRMAN: By decreasing the cost-out of the finished product, isn't that so?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: And if necessary you would concede an increase in the cost-in of the raw material?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Those are two factors, then. It is no use talking of a decrease in the raw material. You have not that in mind at all. If you have anything in mind, it is a decrease on the freight on the finished product?

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: You see, and possibly an increase in the freight on the raw material, isn't that so?

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Aren't those the two factors?

MR. FRAWLEY: Those are the two things.

THE CHAIRMAN: Let us consider it from that point of view. Then what, what do you say here then?

MR. FRAWLEY: If to establish the relationship there had to be an increase in the rate on the raw material and a decrease in the rate on the finished product, then that would operate, such a relationship would be established.

THE CHAIRMAN: I mean, for instance, you had cases before which the Board decided on that very question, didn't you?

MR. FRAWLEY: No, not on this - -

THE CHAIRMAN: Well, I mean part of that question. I think Mr. Harries told us about it.

MR. FRAWLEY: There was a case of Gainers where they had asked for the Winnipeg rate. Our proposal does not ask for any particular rate.

THE CHAIRMAN: Is that the only case, the Gainers case?

MR. FRAWLEY: And then there was one other case.

THE CHAIRMAN: There was a case that the Board heard and decided, and we were told that some of the shippers went back on the home industry advocates in order to have the lower rate, isn't that so?

MR. FRAWLEY: Just a minute, my lord, would you let me consult - -

THE CHAIRMAN: What was that case?

MR. FRAWLEY: That was the case of Alberta and Saskatchewan vs. - -

THE CHAIRMAN: The railways I think?

MR. FRAWLEY: Vs. C.P.R. That is in 1928
18 J.O.R. & R. 406.

THE CHAIRMAN: What are the facts there? It
would help us to understand this question. .

MR. FRAWLEY: That was the case in which
the packing people asked for the Winnipeg relationship.
Now, we are not asking for - -

THE CHAIRMAN: Pardon me, what packing
people?

MR. FRAWLEY: Well, the packing people in
Alberta.

THE CHAIRMAN: Yes, now what do you mean by
the Winnipeg relationship?

MR. FRAWLEY: They asked for the rate to the
east not to exceed the rate - -

THE CHAIRMAN: You mean the rate on meat?

MR. FRAWLEY: Yes, on meat, sir -- to not
exceed the rate from Winnipeg.

THE CHAIRMAN: They asked to have the same
rate from Calgary to Toronto as from Winnipeg to
Toronto?

MR. FRAWLEY: No, I am told, sir . They
wanted, I am told, sir, the same relationship on the
meat and livestock from Alberta to Toronto as applied
from Winnipeg to Toronto.

THE CHAIRMAN: When you say "relation" you
mean a comparison of the two rates?

MR. FRAWLEY: That is right, my lord.

THE CHAIRMAN: The same margin?

MR. FRAWLEY: Yes, my lord, the same relation-
ship.

THE CHAIRMAN: And what happened?

MR. FRAWLEY: The same percentage relationship, and it was rejected.

THE CHAIRMAN: Now, who opposed it, you see? Were not they the producers of livestock?

MR. FRAWLEY: The Eastern livestock people opposed it, I am told. I mean, when I say livestock, I mean packers.

THE CHAIRMAN: Of course they would, yes, but I mean what did the livestock producers say?

MR. FRAWLEY: I am told that the livestock producers were not in the case at all.

THE CHAIRMAN: The ranchers were not interested?

MR. FRAWLEY: Not in that case at all.

THE CHAIRMAN: Who was it went back on the - -

MR. FRAWLEY: Burns and Company, a packer in Calgary, because they made other plans and bought plants in Winnipeg and so on.

THE CHAIRMAN: At any rate the rate was not allowed?

MR. FRAWLEY: That particular rate, that was not allowed.

THE CHAIRMAN: Can you tell me concisely what reasons they gave? Perhaps you cannot?

MR. FRAWLEY: We have quoted extracts from the case and they appear at page 10583 of the record.

THE CHAIRMAN: What volume is that?

MR. FRAWLEY: That is in Volume 55, sir.

THE CHAIRMAN: I mean to say that the Board there used that expression, that they cannot consider industrial or economic factors and so on ?

MR. FRAWLEY: Well, I am told that they did not, sir.

THE CHAIRMAN: Because, you see, you are now submitting to us a draft which covers that identical sort of application.

MR. FRAWLEY: Yes, and it puts it on a different basis. We would not be asking for any particular rate.

THE CHAIRMAN: In order to understand this intelligently you must see just what the Board did.

MR. FRAWLEY: What has transpired, yes, my lord.

COMMISSIONER ANGUS: Mr. Frawley, would rates under the proposed new section be easy to reconcile with your equalization principle? Would they be competitive rates or would they be special rates?

MR. FRAWLEY: I think they would be commodity rates.

COMMISSIONER ANGUS: Commodity rates. Then wouldn't whatever rates were fixed for a movement of a certain distance in Alberta either for meat or for livestock, have to apply for movements of the same commodity for a similar distance in some other part of the country?

MR. FRAWLEY: Well, that would follow, yes, sir.

COMMISSIONER ANGUS: Where the conditions might be quite different.

MR. FRAWLEY: Well, yes, because if those are operating conditions, density of traffic conditions, and that sort of thing, we reject those on our equalization principle, in any event. We say those are the conditions which should not prevail to distinguish between rates in the east and west or in the Maritimes or any other place.

COMMISSIONER ANGUS: But you would ask the Board to fix rates, in this example, for meat and livestock, to

suit conditions in Alberta, and then those rates would be projected to other parts of Canada, perhaps increasing the rates on livestock for a similar distance, and decreasing the rates on meat for a similar distance.

MR. FRAWLEY: Yes, Dr. Angus, there is, so far as I know, nothing peculiar about the conditions for the movement of livestock in Alberta as against the same kind of movement of livestock in Ontario or Quebec. I don't know of any, even operating conditions.

COMMISSIONER ANGUS: No, but I quite understand some one who had to move livestock in Ontario or Quebec being a little bit annoyed if his rate was put up to suit special conditions that exist in Alberta.

MR. FRAWLEY: Well, that may be, sir. I don't know that that is just germane, but as far as annoyance is concerned there has been a great deal of annoyance in eastern Canada about freight rates in central Canada for a long time.

COMMISSIONER INNIS: Is there much truck competition in the livestock industry in Alberta?

MR. FRAWLEY: Yes, a great deal of it. I think it must be admitted that the railways had lost it except on long hauls, and even now it may be interesting to note that from the very terminus of the Northern Alberta Railways, Dickson Creek, they are going up to 400 miles bringing trucks in from Dickson Creek to Edmonton truck-yards, and all the short haul has been lost to the trucks.

THE CHAIRMAN: Does this decrease the urgency of this amendment of yours?

MR. FRAWLEY: No, sir, not at all. It may be that some of this traffic might perhaps get back on the rails, I don't know. Certainly anything that goes in by truck would

not be affected because it is definitely an in-and-out matter, and would not apply unless the livestock moved in by rail, of course.

THE CHAIRMAN: Then in that proviso you say that no such toll shall establish unreasonable difference. Now, what would be your test there? How would the Board know how to apply that?

MR. FRAWLEY: I think it would be of no importance to particularize on that.

THE CHAIRMAN: Wouldn't it be part of what they had to consider in the foregoing part?

MR. FRAWLEY: No, my lord.

THE CHAIRMAN: You say they are not allowed to fix any rate which is unjust or unreasonable.

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: Anyhow. Why do you get this, then?

MR. FRAWLEY: If, as I said before, to establish the relationship we desire, it had to be 25 cents for the livestock and then we found that by analogy there was a rate of 50 cents moving other livestock a similar distance, then, as I said before, this is all rejected, it does not apply, that is all. The relationship cannot then be established because it would be unfair to the analogous movement with which I am comparing it.

THE CHAIRMAN: The point is, why clutter up the act with repetitions here and there of the same idea? The dominant idea is that all rates must be just and reasonable.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Why do you say here that you want this rate, but you admit it must not be unjust and unreasonable, because you have to admit that?

MR. FRAWLEY: We agree, my lord, that we must not have this relationship at the expense of being

unfair to some other - -

THE CHAIRMAN: No, you can't have it because it would be an unjust and unreasonable rate to those people and prohibited by that same section of the same statute, but why say it twice in the same section? However, I will leave it.

MR. FRAWLEY: Well, that is a matter of the precision of the drafting, sir . I agree that if it is not just and reasonable it should not be fixed.

THE CHAIRMAN: You see, as you did this morning, I think you very wisely struck out this sub-section (3) of another section because it brought about a repetitious enactment that would be just misleading. It seems to me that you are doing something similar.

MR. FRAWLEY: That may be, sir. I think your lordship has called something to my attention that is very much to the point, it may be from the standpoint of unnecessary provision of repetitious statute.

THE CHAIRMAN: You see, you are drawing a proviso to a proviso. Well, all right, just go on, Mr. Frawley .

MR. FRAWLEY: As I say at the bottom of J-6, the only issue before this Commission is whether our proposal should be reduced to a statutory provision.

The first of these is the fact that the
 government has been unable to secure
 the necessary funds to carry out its
 policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The second cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The third cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The fourth cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The fifth cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The sixth cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The seventh cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The eighth cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The ninth cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.
 The tenth cause is the fact that
 the government has been unable to
 secure the necessary funds to carry out
 its policy of expansion. This has been
 due to a variety of causes, including
 the high cost of the war, the
 depreciation of the currency, and
 the general economic depression.

I now propose to discuss briefly the defences raised against our proposals. I do not know whether I should not perhaps interrupt, my lord, and say that this is an attempt to cure what is an injustice. I donot know what I can say to the Commission to make you feel that this is a wrong thing, the fact that so much live-stock is going out of Alberta on the hoof. I want to impress upon the Commission that we do not get any support from these eastern packers. This is a matter that I think should be called to the attention of the Commission. The railways are quite indifferent about it. The railways are quite convinced that my provision is perfectly silly and stupid, but I must bring this to the attention of the Commission. Alberta is a live-stock producing province, and unless we are to go on being hewers of wood and drawers of water we must process, we must have secondary industries. This is my attempt to offer something to the Commission. If it is not just letter perfect of course; that is because I have not done a good job.

THE CHAIRMAN: We understand entirely. You told us at the beginning that the thing you are striving for is to see that the raw materials produced in Alberta are processed in Alberta as far as possible. I suppose every province could take the same view.

MR. FRAWLEY: Yes, except -- I do not say they are backward but they have not got as much livestock development as we have. We have a reasonably good packing industry, but what is so difficult for us to have to swallow in Alberta is that this excellent scheme, these livestock rates are for what, for West Toronto so that Canada Packers can keep continuing to take our raw material on the hoof. We want to end that. This

is a submission made by the province of Alberta that we should have more secondary industry. We grow the livestock and we ship it off to the rest of the world. We want to process it ourselves.

It has been suggested to the Commission that an amendment of this kind is not practical. We submit that it is very practical and the experience of the Interstate Commerce Commission confirms this.

In the United States the Commission has fixed the rate relationship between raw material and finished product.

The most recent case dealing with this is George H. Hormel and Company et al vs. the Atchison, Topeka and Santa Fe Railroad Co., et al 1945, 263 I.C.C.9, which had to do with the meat-livestock relationship. There the Commission said at page 57:

"the relation to New York was prescribed by us on transportation standards after extensive litigation and has been observed for many years."

This is an interesting case and I want to read one or two very short passages from it. The case begins at page 9 of 263 I.C.C., and I want to read from page 12. I am only quoting these very short passages to get the setting of the case.

"The midwestern interests say that it is an economic waste to ship live hogs some 1,600 miles or more from where they are produced to the Pacific coast for slaughter, that a reasonably related rate structure should be here prescribed which will permit the midwestern packers to slaughter a fair share of these home-grown hogs in the midwest and ship the meats produced therefrom to the Pacific coast for sale there in competition

with the meats from similar hogs now moving on the hoof from the midwest to the Pacific coast. . ."

At page 57 the report reads as follows:

"The assailed rates do not permit free movement of meats from the midwest to the Pacific coast. In the case of the products of hogs this is due almost wholly to the fact that the rates on meats are excessive as compared to those on the live animals. From Omaha to Los Angeles, for example, the rate on fresh meat is about 249 per cent of that on the live animal, whereas in the opposite direction from Omaha to New York the rate on fresh meat is only 136 per cent of the rate on the live animal. The relation to New York was prescribed by us on transportation standards after extensive litigation and has been observed for many years. The higher relation to Los Angeles is due partly to our prescription of low rates on the live animals and partly to the maintenance by the carriers of high rates on meats. The westbound relation between the two has never been specifically prescribed by us as it has to New York. There is no logical reason, however, for a greatly different relation westbound than eastbound."

(Page 22121 follows)

The Hormel case would seem to effectively dispose of the Canadian Pacific's contention that our amendment is impracticable.

THE CHAIRMAN: Will you tell us, Mr. Frawley, if there is anything in the statute at the present time about milling in transit or processing in transit?

MR. FRAWLEY: No, there is nothing in the statute.

COMMISSIONER INNIS: That is simply a convention, is it?

MR. FRAWLEY: It is a convention of the filing of tariffs which permit it under the general powers of the railways to file tariffs to allow that concession.

COMMISSIONER INNIS: You have a rather similar problem?

MR. FRAWLEY: Yes, we just touched on that during the presentation of our case. You may remember we touched on it as an example.

THE CHAIRMAN: Do I understand this American case established the principle that the relationship between the raw material and the finished product west-bound must be the same as that eastbound?

MR. FRAWLEY: I do not think it went so far as to say that it should be exactly the same. They said when you compared it with the one they had established eastbound then it was out of line, and it had to be revised.

THE CHAIRMAN: They put them in line?

MR. FRAWLEY: They certainly revised the rates to bring them more in line.

THE CHAIRMAN: In that case did the shippers of the raw materials have anything to say? Were they heard?

MR. FRAWLEY: Oh, yes, in the Hormel Case all

the various interests were represented, ranching, packers, livestock raisers, everybody.

THE CHAIRMAN: What was the attitude of the shippers?

MR. FRAWLEY: You mean the packers?

THE CHAIRMAN: No, the shippers.

MR. FRAWLEY: The livestock shippers. At page 25 of the report there is a section which I should like to read:

"Reduced Rates on Meats will Benefit
Midwestern Hog Producers

"The record conclusively establishes the fact that the heavy eastern demand sets the basic prices for hogs sold on midwestern markets, of which Omaha is typical, and that normally the Pacific coast ceiling prices reflect the Omaha prices, plus transportation and other incidental charges for handling and feeding en route. It also establishes that the present wide spreads in rates on meats over those on livestock from the Midwest to the Pacific coast, have enabled the Pacific coast packers to outbid the midwestern packers by a few cents for hogs in western Nebraska, Kansas, and eastern Colorado, and that if such spreads were narrowed the midwestern packers would be in position to offer keener competition for the purchase of such hogs, thereby strengthening the market prices for midwestern hog producers."

(Page 22123 follows)

Referring to what Mr. Jefferson said I say at page J-7 that the case also disposes of the statement made by Mr. Jefferson at page 15524 that the Interstate Commerce Commission has never succeeded in working out and giving effect to any relationship based on the loss of weight in the manufacturing process.

The general conclusions of the judgment in the Hormel Case are to be found at page 10586 of the transcript and at page 57 of the report. The case arose out of complaints that the rate relationships were such as to militate against the processing of Midwest livestock in the producing area. The Commission directed the carriers to make rates which remedied this situation.

Mr. Jefferson's Exhibit 174 makes the point that in the United States the rate relationships between meat and livestock which the Interstate Commerce Commission has fixed vary between different origins and New York.

We have never suggested that the same relationship should apply from all producing points to all consuming points.

COMMISSIONER ANGUS: Would your equalization proposals not come near to doing that?

MR. FRAWLEY: Would equalization come near to having the same relationship apply?

COMMISSIONER ANGUS: Would that not come pretty near to it, that having fixed the relationship and therefore fixed your rates for one set of distances you would have to apply the same rates to similar distances in other directions?

MR. FRAWLEY: I am told that when the rate of taper is taken into account there have to be adjustments

made?

COMMISSIONER ANGUS: For different distances.

MR. FRAWLEY: Different distances.

We have never suggested that the same relationship should apply from all producing points to all consuming points. It is precisely this point which marks the distinction between what we are presenting to this Commission and what was presented by the Provinces of Alberta and Saskatchewan et al in the General Freight Rates Investigation.

COMMISSIONER ANGUS: The rate of taper would only affect the question if you had a different rate of taper for meat than you have for livestock. The relationship would remain the same, wouldn't it?

MR. FRAWLEY: The distance into the plant would ordinarily be much shorter than the distance that the meat product would have to go, and that would take care of the differences in the taper.

In that investigation the complainants requested a fixed relationship from all western packing plants to the east. Indeed, the complainants requested the Board to prescribe the then existing Winnipeg relationship. Our proposal to this Commission evidenced by the amendment which we have submitted merely seeks to establish that in no case should the rate relationship be such as to discourage the location of industry at the point of production.

It has been suggested that our proposal is not in accord with what have been called the accepted rate-making principles. The Canadian Pacific has attempted to put the whole matter on an "either - or" basis. Either the Commission must accept the approved principles and discard our amendment, or the Commission

must accept the amendment and discard the approved principles.

The fact is that the principle that we advocate supplements the so-called "approved" principles and is not antagonistic to them. The working of the amendment itself makes this perfectly clear.

Then we have the last proviso that we were discussing this morning. The last proviso reads:

"And provided further that any such relationship between the tolls shall not result in an unreasonable difference between the tolls so prescribed or established on the raw materials and the tolls on similar raw materials or between the tolls so prescribed or established on the products and the tolls on similar products."

This provision leaves ample room for the Board to consider the cost of service principle, the value of service principle and any of the other recognized principles. If in a particular case the adoption of a rate relationship which does not discourage producer location does violence to other accepted principles, the Board may refuse the application. Professor Stewart stated our position in this regard at page 10866 of Volume 56 and Mr. Harries took the same position. (P. 11014 and 11045, Vol. 57, and p. 11099, Vol. 59.)

Our amendment does not make provision for a possible disturbance to existing industry. Dr. Innis raised that point when we were putting in our case. I want to make it quite clear. As we pointed out at p. 10892, the adjustments brought about by this amendment will be effective only in the long run.

THE CHAIRMAN: What does that mean?

MR. FRAWLEY: It is not suggested that within a matter of weeks or months the livestock would stop running to West Toronto and all run into Calgary and Edmonton. It is just over the long run.

THE CHAIRMAN: You mean that time would be required to put it before the Board and have them prescribe new rates?

MR. FRAWLEY: What we say is that it is in the long run. In the long run it will likely disturb existing industry, and we do not put any proviso in our amendment which will nullify that because that would destroy the whole purpose of it. I think we must face that fact.. If our livestock is now going to West Toronto to be processed and the result of our amendment keeps it in Calgary, Edmonton, Red Deer and the other packing house places then the industry in West Toronto will have to suffer.

Such shifts as do occur are not likely to take place at the expense of existing plants and facilities but will influence the trend of future expansion.

We think that is the real purpose of it.

THE CHAIRMAN: Now that you have finished that part, the principle you wish to have established, which of course would be applicable throughout the whole country, is that the margin between the freight on raw material and on the finished product should be so framed as to permit the processing of that raw material as near to its point of production as possible.

MR. FRAWLEY: That is the principle.

THE CHAIRMAN: I suppose then that this should be done without undue prejudice to the producer of the raw material.

MR. FRAWLEY: Yes.

THE CHAIRMAN: The shipper of cattle.

MR. FRAWLEY: Yes, my lord.

THE CHAIRMAN: Is there anybody else who should be safeguarded?

MR. FRAWLEY: I think not. The packers will be anxious to have their interests safeguarded.

THE CHAIRMAN: To that extent you would make it clear that the Board has the power to do this, to take these matters into consideration.

MR. FRAWLEY: Yes, and I do not regard it as satisfactory to bring a case of this sort under existing legislation. I think it is time there should be something specific there to direct the Board.

(Page 22128 follows)

THE CHAIRMAN: you realize the importance of what you are doing. It does not affect Alberta alone.

Mr. FRAWLEY: No.

THE CHAIRMAN: There has to be the general disposition of the Act that will have that tendency to encourage the processing of all raw material as near as possible to where it comes from.

MR. FRAWLEY: Yes.

THE CHAIRMAN: That applies to Saskatchewan and Alberta?

MR. FRAWLEY: Yes, to Saskatchewan and Alberta, Manitoba, Quebec, Ontario, Nova Scotia and so on. That is why I have confidence in the suggestion. It is not a matter of selfish interest peculiar to Alberta.

THE CHAIRMAN: It has to be universal.

MR. FRAWLEY: Yes. The principle is simply this: Must the live material always be shipped out from the producing area? It is the same old story.

THE CHAIRMAN: From the national point of view, has any objection been urged against that? Has anybody urged anything?

MR. FRAWLEY: Nobody has urged anything against it. But I do not mind telling the Commission that the Meat Council of Canada is not interested in it.

THE CHAIRMAN: Who?

MR. FRAWLEY: The Meat Council of Canada, which is the packers' group, the packers council. There is no reason why the Commission should not know about it.

THE CHAIRMAN: Where are they?

MR. FRAWLEY: They have their offices in Toronto. They are representatives of the packers from coast to coast. They are not interested, of course, because it is the same

old thing. They have their plants all over Canada, and they want the one at West Toronto to flourish on Alberta livestock or Saskatchewan livestock, of course.

THE CHAIRMAN: You must have studied this matter very thoroughly. What would be the effect on the consumers of the country? I refer to the principle of this general application.

MR. FRAWLEY: That has been given some study, and our research indicates that it has not increased the price of meat in the United States where it is operating, and we see no reason why it should increase the end price of meat in Canada any more than it is today. There is no reason, sir. There is not any reason at all; because the meat would be going out, and presumably --

THE CHAIRMAN: It would apply not only to meat. It would apply to all raw materials.

MR. FRAWLEY: That is right. That is important to keep in mind. Meat is one thing that sort of rises up and stares us in the face.

THE CHAIRMAN: Yes; because you are from Alberta. I understand that.

MR. FRAWLEY: That is right. Yes, it is an obvious thing. Just to digress for a moment; When you speak of the development of this country, you ask yourself the question: "In what direction would Alberta be expected to develop?" The answer surely is, "In the exploiting of its primary industry." Its primary industry is livestock. Other things being equal, one would expect that that primary industry would be exploited. We are not asking to make Swiss watches in Alberta. We are asking to have more of our raw material processed in the producing area, and sent to market.

THE CHAIRMAN: You are asking to have rates which would permit your finished products - such as bacon and so on -

to get into the eastern markets.

MR. FRAWLEY: That is it. It is there now.

THE CHAIRMAN: Yes. But you want to make it even easier for them to do that, I gather.

MR. FRAWLEY: That is right.

THE CHAIRMAN: That is so, is it not?

MR. FRAWLEY: That is right. We want to sell all of this new growth in our packing industry, of course.

COMMISSIONER INNIS: Mr. Frawley, this raises the question again as to whether you are not placing a further additional burden on the Board since practically all industry is effected in one way or another by this problem of reduction in rates or the problem of transportation. It is perhaps a little bit exaggerated in the case of meat. I am wondering ^{this} particularly because of the strength of its effect in a protective system such as we have in Canada. Exactly what has happened is as you have described in the Province of Alberta; and the same thing applies to other regions which are bound to suffer. You must, I suppose, take steps to protect yourself from the burden of that system. I am wondering whether it would not be possible to have other devices. The provinces had been quite ingenious in working out a system of taxes, licences, and what not for the encouragement of industry within their particular region. I was wondering if you might get further and get what you wish more quickly in that way than by relying on this whole question of railway rates or by putting such an enormous burden on the Board.

MR. FRAWLEY: Something comes to mind there. You may remember, Dr. Innis, that there was the cry to tax the chain stores in Western Canada.

THE CHAIRMAN: The what?

MR. FRAWLEY: To tax the chain stores. They seemed to be unwelcome visitors to our provinces. But that did not

seem to appeal to the people. Those devices were thought of and considered. I do not know what happened. Maybe it reached the length of proposed legislation. But I do not know of any province now that singles out the chain store for taxation. In fact, just speaking off hand, there might be just the question whether it is constitutional. I suppose perhaps it might be constitutional but it might not be.

You would have the question of dominion companies and inter-provincial trade and so on. I can see that any local legislation which might in any way affect the free inter-provincial traffic in either meat or livestock might run foul of the British North America Act, and so serve no purpose.

Coming back to your suggestion that this may impose a large burden on the Board, that is the same question which, with great respect, this Commission has to face. I think we have to have a better Board. We have got to have bureaus in that Board, using the phrase they have in the I.C.C., which will be concerned with the special matters, because they are important. If there can be proper development of the economy of Alberta, Saskatchewan, Manitoba and the rest of Canada because of the working of this statute, then in my submission it will warrant the setting up of special bureaus in that Board. We could not do that - I think I can go that far - with the Board as we have it now. There must be something. Then this burden can^{be} - and I would wish it to be - a burden that the Board is equipped to discharge.

I am obliged, Dr. Innis, for your suggestion about the tax device. I think that the provinces must help themselves as much as they can in this matter. It is Alberta's design to see that industry is developed. Just to depart upon a subject that has certainly been a sore point, we do not like to see the railways telling us that we cannot have a refinery in Saskatchewan, as they told the Board in the case of

McColl-Frontenac. Those are things we do not like. Even though perhaps it did not succeed, we not like the idea that the railways should have anything to say about those things.

I pass on now to the next heading, "other rate anomalies," and these are matters that can be disposed of more quickly.

OTHER RATE ANOMALIES

Developmental Rates

Our proposal regarding developmental rates is embodied in an amendment New Section 329A, subsection 3, which reads:

Section 329A

- (3) Notwithstanding the provisions of subsection (2), the company may, for the purpose of assisting an industry or of developing traffic which otherwise might not exist, establish tolls lower than the tolls for traffic of the same description: Provided that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and the company shall have the right to cancel or amend such lower tolls at any time within such period.

The purpose of this amendment is twofold. First, it makes specific provision for the granting of low rates to meet the needs of new industry which cannot be met under the preceding subsections of Section 329A, which deals with special tariffs. Second, it specifies the maximum period of time for which such rates shall be in effect, subject to the provision that the period of time may be extended with the approval of the Board.

This amendment to the Act is necessary to protect the rights of shippers and the rights of the railways. In

the absence of a time limit, special rates to assist industry have a habit of becoming normal tolls. These special rates then make a smaller contribution to earnings than traffic of a similar description, and consequently discrimination is created. In the absence of a time limit, there is also the possibility that the railways would be hesitant about granting a reduced rate because of the fear that it could not later be raised to a normal level. The amendment we propose keeps the advantages of developmental rates and eliminates their disadvantages.

THE CHAIRMAN: Just wait a moment now. You call this Section 329A. Has it any relation to Section 329?

MR. FRAWLEY: No. It really has not. We have a new section 329A which we discussed yesterday.

THE CHAIRMAN: You say:

"Notwithstanding the provisions of subsection (2),
--"

MR. FRAWLEY: Yes, it is a special tariff.

THE CHAIRMAN: Where is subsection (2)?

MR. FRAWLEY: Your lordship should have, ^{that} of course, ⁱⁿ Volume 108 where we put in all our amendments.

THE CHAIRMAN: You say:

"Notwithstanding the provisions of subsection
(2) --"

subsection (2) of what? Of this same amendment?

MR. FRAWLEY: If your lordship will turn back, you will find it. It is too bad you have not got it all in one place. If you will turn back to page C-10 you will find there ^{that} section 329A is set out. You will find section 329A which we discussed. These are our equalization sections, section 329A(1) and (2). This one on developmental rates follows on immediately after those two subsections appearing on page C-10.

THE CHAIRMAN: Sub-section (1) reads:

"The special freight tariffs shall specify the toll or tolls, --"

And so on.

MR. FRAWLEY: Those are the equalization sections. We say that notwithstanding what we have provided in sub-section (2) - that is, the equalization of the commodity rates - the company may for the purpose of assisting industry, establish tolls lower than the tolls for traffic of the same description.

THE CHAIRMAN: Just a minute until I get page C-10. On page C-10, sub-section (2) reads:

"The tolls for the same description of traffic charged in the special freight tariffs shall be just and reasonable and shall be the same for the same distances..."

MR. FRAWLEY: Yes, that is the point.

THE CHAIRMAN: Then you say:

"Notwithstanding the provisions of subsection (2), --"

MR. FRAWLEY: Yes. We say that notwithstanding that, the railways may establish, for the purpose of assisting an industry, establish tolls lower than the tolls for traffic of the same description. That is why we have to say, "notwithstanding the provisions of subsection (2)".

COMMISSIONER INNIS: When you say "company", you mean the railway?

MR. FRAWLEY: Yes, the railway. The "company" is the word that is used pretty well through the Railway Act. That is the technical term.

THE CHAIRMAN: You say:

"notwithstanding the provisions of subsection (2), the company may, for the purpose of assisting an industry

or of developing traffic which otherwise might not exist, establish tolls lower than the tolls for traffic of the same description: Provided that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and the company shall have the right to cancel or amend such lower tolls at any time within such period."

MR. FRAWLEY: We say that these developmental rates should not be put in to remain indefinitely and then become normal tolls.

THE CHAIRMAN: Are you hinting there that they would be unjust and unreasonable? Subsection (2) says that the tolls shall be just and reasonable. I am afraid that you use that phrase too often. It is in the Act. It is the corner stone of the Act that they must be just and reasonable.

MR. FRAWLEY: It is an exception. It is definitely an exception.

THE CHAIRMAN: You say:

"The tolls for the same description of traffic charged in the special freight tariffs shall be just and reasonable and shall be the same for the same distances,..."

MR. FRAWLEY: Yes.

THE CHAIRMAN: Then you make this exception?

MR. FRAWLEY: Yes, it is an exception. It is expressly that.

THE CHAIRMAN: You understand what I mean, do you, Mr. Frawley?

MR. FRAWLEY: Yes.

THE CHAIRMAN: You have imported into this subsection (2) that requirement that the rate be just and reasonable.

MR. FRAWLEY: Yes.

THE CHAIRMAN: In subsection (3) of section 329A you say:

"Notwithstanding the provisions of subsection (2)"
 -- notwithstanding the provision for freight rates
 to be just and reasonable, the railways may be allowed
 to do something else.

MR. FRAWLEY: Yes. I suppose that ^{the} exception
 is, "notwithstanding the requirement that they must be
 the same for all distances".

THE CHAIRMAN: Yes.

I suggest again that your repetition of the words
 "just and reasonable" are only hurtful to you. All the
 rates must be just and reasonable. Is that not so?

MR. FRAWLEY: Yes.

THE CHAIRMAN: No matter what kind of rates they
 are, special, general, ^{or} competitive, the first requirement
 is that they be just and reasonable, is that not so?

MR. FRAWLEY: Yes, that is right.

THE CHAIRMAN: It does not suit your purpose to
 keep on repeating that. In the language you have used there,
 you say: "notwithstanding the provision of subsection (2)"

MR. FRAWLEY: I see exactly what your lordship
 means.

THE CHAIRMAN: They might even put into effect an
 unjust and unreasonable rate.

MR. FRAWLEY: Yes. There must be no exception
 to that.

THE CHAIRMAN: I think that your drafting of
 subsection (2) should be changed by striking ^{out} those unnecessary
 words "shall be just and reasonable" so that it will read:

"The tolls for the same description of traffic
 charged in the special freight tariffs shall be the
 same for the same distances..."

MR. FRAWLEY: Yes. What is in your lordship's mind is that they are unnecessary because the statute already provides for that.

THE CHAIRMAN: Not only that, but if you put them in there again specifically, and then in another section say: "notwithstanding all that", you may have something else.

MR. FRAWLEY: You have taken the "just and reasonable" concept out of the developmental rates.

(Page 22138 follows).

COMMISSIONER INNIS: You are more liberal than the railways. As I understood Mr. Jefferson, he would be reluctant to leave these tolls in effect more than a year. I think the Canadian National was perhaps a little more liberal, but you are both more conservative and more liberal in this statute.

MR FRAWLEY: Yes. I say that they could go beyond a year, but the Board would have to say so; but when they are put in---

THE CHAIRMAN: What are you looking forward to, with this amendment, to having done?

MR FRAWLEY: Well, for instance, your lordship will recall the case we heard so much about, about the purebred livestock. Now, that was a rate that was put in, and there was no time limit on it, and it was allowed to remain there year after year, and then the purebred livestock breeders were very much upset when it was taken out. Now, under our amendment, if that situation was arising today for the first time, it would go in for not more than ^{three} years, and then at the end of three years there would be notice to everybody, "If you want that increased, if you want it continued, you must go to the Board and get special approval." Then you would not have the situation of the railways thinking they could not get back to the normal rate for purebred livestock, and on the other hand the breeders thinking that it was a great injustice to increase that rate which they had come to look upon as the normal rate---

THE CHAIRMAN: According to your draft, the result would be, would it not, at the end of three years these rates would expire if nobody took action?

MR FRAWLEY: That would be right.

THE CHAIRMAN: They would just die.

MR FRAWLEY: They would be not more than three years. They could be for less than that, but not for more than that, but they could be extended beyond that by the Board.

COMMISSIONER ANGUS: If they were extended beyond three years with the consent of the Board, how could they then be terminated?

MR FRAWLEY: I think then, sir, that the extending order would prescribe its own limit. That would seem to be a simple expedient to use.

THE CHAIRMAN: Tell me what you mean by the last line or two there. You say:

"Provided that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and the company shall have the right to cancel or amend such lower tolls at any time within such period."

What is "such period" there? The three years?

MR FRAWLEY: "Within such period."

THE CHAIRMAN: Is that a new period or the three-year period?

MR FRAWLEY: Well, the three-year period, sir.

THE CHAIRMAN: While the railways may do this, they may not fix a period of longer than three years to begin with, but at any time within that three years they can stop; is that what you mean?

MR FRAWLEY: Yes, my lord; that is what the section says.

COMMISSIONER ANGUS: If the Board approves them for another three years, can the railways cancel within the second three years?

MR FRAWLEY: Well, I think the section would have to be read that way, sir, yes.

COMMISSIONER ANGUS: Well, could it be read that way?

MR FRAWLEY: Well, there you are again, sir. It is just a case of these precise words. That certainly is what I intend. Certainly if they had the right to cancel within the first three years they must have it within the second three years, and it comes back to the precision of the language.

COMMISSIONER ANGUS: If you leave out "within such period" you get your result.

THE CHAIRMAN: Yes; first you say you fix a period not to exceed three years, and then you say that such tolls shall die at the end of the period first fixed unless the Board---

MR FRAWLEY: Yes; we are content to strike out those three last words; they do not add anything to it.

THE CHAIRMAN: What do you want? Do you wish it so that the railways may fix a special rate to encourage an industry for a period which is to be not longer than three years?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: But, having fixed that rate, are the railways to be at liberty to cancel it again in a month or six months or a year, or what?

MR FRAWLEY: May I consult as to that?

That is the fashion in which we have drafted the amendment, and that certainly gives---

THE CHAIRMAN: That is what you want?

MR FRAWLEY: ---freedom to the railway to cancel.

THE CHAIRMAN: Then first you have the fixing, then the proviso that such lower tolls shall not remain in effect for a period of more than three years without the approval of the Board, and provided further that the railways shall retain the right to cancel these special rates at any

time.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: That is what you want?

MR FRAWLEY: That is right.

Now, dealing on page K-2 with Stop-off and In-transit Privileges, I say:

Stop-off and In-transit Privileges

The present situation with regard to stop-off and in-transit privileges---

THE CHAIRMAN: Then you just strike out the three last words in that?

MR FRAWLEY: The three last words.

THE CHAIRMAN: "Within such period."

MR FRAWLEY: Yes, my lord.

The present situation with regard to stop-off and in-transit privileges is that, subject to the power of the Board to remove discrimination, it is the prerogative of the railways to grant or refuse these privileges.

To-day, if a shipper seeks either of these privileges he must go to the railway and ask for it. If the railway refuses to grant the privilege, the shipper has no recourse to the Board on the ground of the reasonableness of his request. The Board has said that such a matter is the railways' business and if they say no that is the end of it.

We want that situation changed. We believe that there should be recourse beyond the refusal of the railroad. We ask this Commission to recommend that the Board of Transport Commissioners be required to decide, on the basis of reasonableness, the application of any shipper for a stop-off or an in-transit privilege; the application for such privilege having been first made by the shipper to the railways and refused by them.

THE CHAIRMAN: Is there any particular part of the Act that that would relate to?

MR FRAWLEY: 316 perhaps would be the most appropriate section.

THE CHAIRMAN: You have not any amendment, I understand.

MR FRAWLEY: No, my lord. Section 316.

THE CHAIRMAN: Facilities for traffic, yes.

MR FRAWLEY: Connecting railway to afford facilities.

THE CHAIRMAN: Do you call it stop-off? Is that the expression?

MR FRAWLEY: Stop-off and in-transit privileges.

COMMISSIONER INNIS: Coming back to section 329A for a minute, Mr. Frawley, there is a point that has worried me. If the railway insists on stopping at the end of a year, does this clause provide that they should be encouraged to go beyond that time for developmental purposes, and if so are they entitled to ask for a subsidy?

MR FRAWLEY: You ask me, Dr. Innis, is this section intended to encourage them to go beyond?

COMMISSIONER INNIS: To go beyond. Most of them would say, as I think Mr. Jefferson said, "We will not go beyond a year." Now, this presumably encourages them to go beyond the time which they would ordinarily follow.

MR FRAWLEY: Yes.

COMMISSIONER INNIS: Is that right?

MR FRAWLEY: Yes, because we extend the period to three years, and we look---

COMMISSIONER INNIS: Well, if they are to be encouraged to continue, presumably at what they would regard as a loss, then are they entitled to ask for some compensation?

MR FRAWLEY: The only thing about that, sir, is that it is a rate which is initiated by the railways. I think that is the cardinal principle of it. It is a case of a railway saying to an industry, "We will voluntarily s put in this lower rate." They do not need to use the section at all. One would think that before the rate went in they would have said to the livestock breeders, if they were the ones, "Now, you can be assured that this rate will be in for at least three years, or at least two, or at least one, or whatever it is."

THE CHAIRMAN: Would it be allowable for such a rate as this to be non-compensatory?

MR FRAWLEY: Oh, no, no. It must never offend against that principle, sir.

COMMISSIONER ANGUS: Is there anything in this that requires it to be compensatory?

MR FRAWLEY: Oh, well---

COMMISSIONER ANGUS: You made that requirement in respect of competitive rates.

MR FRAWLEY: Oh, yes, there is no question, sir; this must be compensatory, in our submission, in our thinking about the whole matter.

COMMISSIONER ANGUS: In your thinking, perhaps, but in the Act is there anything to that effect?

MR FRAWLEY: It is suggested to me, sir, that when we are thinking of statutory requirements that rates must be compensatory, there is nothing requiring a standard rate to be compensatory, because it has not been thought necessary.

COMMISSIONER ANGUS: It must be just and reasonable to the railway.

MR FRAWLEY: Yes. All rates must be just and reasonable, and this rate must be just and reasonable too, sir.

THE CHAIRMAN: This is one they would fix themselves.

MR FRAWLEY: This is one which they would volunteer, and if they did not volunteer it there would never be any.

THE CHAIRMAN: When they provide for a competitive rate, I do not know of any legal requirement so far, but they tell us that it is always compensatory.

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: That is a rule they follow; but here they might depart from that rule, might they?

MR FRAWLEY: No, we would not want them to depart from that.

THE CHAIRMAN: I thought it sometimes happened that they did lose for a while, in the expectation of doing better later. Mr. Fairweather and Mr. Jefferson both said something about that.

MR FRAWLEY: I recall the outstanding example in my mind that Mr. Jefferson used, which was what they call the at and east grain rates, which he said quite definitely were---

THE CHAIRMAN: He said those were rates fixed in the national interest.

MR FRAWLEY: Yes, I think so, something of that sort.

THE CHAIRMAN: Cargoes going out of Saint John and Halifax and so on instead of out of American ports.

MR FRAWLEY: Yes; but I cannot think of any other rate which the Canadian Pacific has said is not compensatory --yes, I think the rates that bring the coal from Alberta.

THE CHAIRMAN: Well, that is special; they have subsidies for that.

MR GRAWLEY: They get a subsidy.

THE CHAIRMAN: Or somebody gets a subsidy.

~~MR FRAWLEY:~~ ^{FRAWLEY:} Apparently they do not get enough. Perhaps they should go and get more.

THE CHAIRMAN: But did not Mr. Fairweather talk about certain lines being opened up and certain freight rates set with the knowledge that it was only later on that they would pay? Am I not right in that?

COMMISSIONER INNIS: Mr. Jefferson certainly indicated that rates could be set lower for about a year, so that they would not go beyond that, and after that they would be expected to be compensatory.

MR FRAWLEY: Yes. Of course, I think that perhaps we have the over-all position taken by the Canadian Pacific, that they do not, and do not propose to, make rates which are not compensatory.

COMMISSIONER ANGUS: No, but are you prepared to leave it at that, that as a matter of policy they won't do it, or do you think there is anything in the Act which prevents them from doing it if as a matter of business judgment they thought it wise to do it?

MR FRAWLEY: Well, of course, we would say that every time they have a non-compensatory rate it is done at the expense of the rates which are compensatory.

THE CHAIRMAN: That is precisely the point. Supposing they do, for instance -- I am just guessing now -- if a whole lot of iron was discovered in Quebec or somewhere, and there was some industry developing, and they go in there and give such a low rate that it is not compensatory, then would you not immediately complain that the western shippers were paying for that?

MR FRAWLEY: That would be the fact, sir. That raises this whole question, you see, my lord. We never were able to complain about those matters. We were never listened

to at all.

THE CHAIRMAN: But you are raising it, because you would expressly give them the power to put such rates into operation. Now, do you wish to add to that the obligation of these rates being at least to some extent compensatory?

MR FRAWLEY: I am in this position, sir---

THE CHAIRMAN: Or do you leave it wide open?

MR FRAWLEY: I do not desire that they should put in a rate, a developmental rate, that is not compensatory. Now, if I thought---

THE CHAIRMAN: Why don't you say so?

MR FRAWLEY: I was just going to say, sir, that if I thought it was risky to leave it to the general policy statement of the railway, which it is now called to my attention may not be the same in each railway -- and that is a difficulty -- if I thought there was any question of that, then I think it should be statutory.

THE CHAIRMAN: What should be statutory?

MR FRAWLEY: That these developmental rates must not be so low as to be non-compensatory.

THE CHAIRMAN: You would add that to your draft?

MR FRAWLEY: I would add that to my draft, and that might be preferable to leaving it to the general policy-making of the railways.

COMMISSIONER INNIS: Not even for a year, but after that time it was going to be very compensatory.

MR FRAWLEY: Well, that would be the reason for them putting in a rate that was non-compensatory; but even for that, sir, to be consistent about it, even during that year that is being done, and the sinews for the doing of that act are drawn from other non-competitive areas.

THE CHAIRMAN: I remember about this matter of

rates being compensatory, so far as I know, and if anybody knows better I hope I will be corrected -- so far as I know, there is no obligation imposed on the railways now by statute to have only compensatory rates.

MR FRAWLEY: I think that is right.

MR EVANS: I would not agree with that, sir.

THE CHAIRMAN: You would not agree with that?

MR EVANS: No, sir; section 325.

THE CHAIRMAN: Well, I am glad to be told that. What is the section?

MR EVANS: Under section 325 I think the Board could disallow an unreasonably low rate. I would think one which is not compensatory would be unreasonable.

THE CHAIRMAN: You take that for granted, do you?

MR EVANS: Yes.

THE CHAIRMAN: Then even the rates which Mr. Jefferson has mentioned, which he said might be put into effect for a year to encourage an industry, even those rates must be compensatory, from your point of view?

MR EVANS: I would think so, yes.

THE CHAIRMAN: All right.

(Recess)

THE CHAIRMAN: On this question we were discussing about the general principle of all rates being compensatory, we will not take up any more of your time on that, Mr. Frawley.

MR FRAWLEY: Very well, my lord.

THE CHAIRMAN: Later on we will discuss it with Mr. Evans.

MR FRAWLEY: Very well, my lord.

Now, my lord, I think I should just point out that

I have 31 minutes left, according to the time allotted to me, and I am at page 95 of the rough paging I have made, and my argument goes through to page 132. I think it is quite out of the---

THE CHAIRMAN: You are talking of these lettered pages?

MR FRAWLEY: Yes, yours was not paged consecutively, but taking it in sections.

THE CHAIRMAN: What letter are you now at?

MR FRAWLEY: I am now at K-3, my lord.

THE CHAIRMAN: That is right.

MR FRAWLEY: Yes, my lord. If I just took a---

THE CHAIRMAN: As to agreed charges, we take it that you are against them.

MR FRAWLEY: I am against them, my lord.

If I took just a minute of my thirty-one to explain what I have to do, I am now down to section K, and that runs 5 pages; I am on the middle of page 3 of K. Then I have a section of 3 pages on the freight classification. Then I have 23 pages on what I call financial, and that is the matter of uniform accounts and similar matters. So I have really no alternative, sir, but to just pick out without a great deal of prior consideration some of these matters in which I think the Commission would be more interested than some of the others. So perhaps I may go very quickly through it, and say that I think the freight classification should be revised -- of course, I do have this understanding, my lord, that from where I am now moving over on page 3 the reporters will transcribe into the record the balance, the complete balance of my argument, at this point.

Agreed Charges

Alberta requests the repeal of Part 5 of the Transport Act, 1933, 2 Geo. VI Chap. 53, as amended. This part deals with Agreed Charges.

Agreed charges discriminate against shippers who, by the nature of their business, are not able to take advantage of the provisions of an Agreed Charge which their competitors have secured. This problem in is particularly significant in the case of a small shipper who is competing with a large shipper. Two examples of the problems created in this regard are provided by the Lion Oil Case 50 CRC 166 referred to at page 10576 of Volume 55 and the Goodrich Refinery Case 54 CRC 140 referred to at page 10756 of Volume 57.

At page 10950 of the Transcript, Volume 57, the meaning of Section 35(6) was discussed. It has been suggested that Section 35, subsection 6, might provide the necessary protection to a shipper who alleged discrimination. This would certainly be a possibility if the Board fixed different conditions for the complaining shipper than those fixed in the Agreed Charge. However, there are no cases which disclose that the Board has ever fixed different conditions for the complaining shipper. Indeed Coyne at page 620 cited the Goodrich Refinery Case in the following terms:

"Where a shipper alleged that its business had been unjustly discriminated against as the result of the making of an agreed charge, the Board refused to fix a charge for such shipper under Section 35(6) on terms and conditions which would be much more favourable to such

shipper than those contained in the agreed charge."

So there are no cases which bear directly on this point and, in view of the general jurisprudence of the Board under the discrimination sections of the Railway Act, it does not seem that the Board would, in spite of 35(6), be free to establish different conditions for the complainant than for his competitor. The material fact is that there is competition between the two shippers. This would outweigh any differences in the character of their individual businesses and would, I suggest, tie the Board's hands in connection with discrimination which might arise as a result of the agreed charge. The fact would remain that the agreed charge would create discrimination which the Board was powerless to remove.

My submission is that such discrimination is inherent in Agreed Charges and cannot be removed by amending any of the present sections of the Act or by adding new ones.

THE FREIGHT CLASSIFICATION

In our submission regarding changes in the freight classification -- see Transcript Volume 63, pages 13231-36 -- we proposed that the system of classes be equalized between Eastern and Western Canada. A similar proposal was made by the Canadian Pacific. Instead of the original ten classes, the new all-Canada scale should have multiple classes based on percentages of present first-class rates which would be designated Class 100. The existing classes could be fitted into this new system without difficulty and new classes added at the time of reorganization or from time to time afterward as the need arose.

This reform of the class relationships would increase greatly the usefulness of the class rates and would offer a ready means of deriving standard formulae for use in making specific commodity rates. The changes here proposed are closely similar to those now being worked out in the United States. The rather halting progress being made toward adoption of this system in the United States is due to conditions which have no counterpart in Canada: that is to say, the lack of a single classification applying throughout the country. (See page 15409 of Transcript.)

As we are now on the eve of fundamental changes in the freight rate structure in Canada, the reform of the class system should proceed pari passu with rate adjustment.

The Mixing Privilege

Alberta asks this Commission to recommend the uniformity of the carload mixing rule in both Eastern and Western Canada. Our submission will be found in Volume 63 of the Transcript, pages 13237-13244; a recapitulation of the views of the various parties who have spoken on this subject before the Commission is given at pages 13301-02. It is evident from this summary that the interests in Western Canada seeking uniformity are vastly greater than those who favour the retention of the restricted mixing rule. No attempt has been made by the latter to deny that restricted mixing does mean higher freight rates in many instances, nor has any convincing effort been made to indicate any disabilities to Western Canada by the extension of a rule that has worked satisfactorily in Eastern Canada and throughout the United States for a long period of time.

Rules of such importance should not be framed merely to suit the purpose of a relatively small group of shippers who, in any case, pass the freight charges on to the consumer. The dissenting judgment of Commissioner Oliver in Re Proposed Canadian Freight Classification No. 17: 15 J.O.R.R. 177; embodies a statement of the principle that should govern regulatory commissions in settling problems of the type represented by the mixing rule controversy. As Commissioner Oliver says at page 240:

"It would appear to me that the question properly at issue is not the wishes or interests of either the Western retailers or Western wholesalers but of the consuming public of the West."

Whether this neutrality is entirely disinterested does not concern me, except to prompt the question whether in other reforms that have been proposed to this Commission the railways would be equally willing "to carry out the desires of the patrons of the railways" where no net loss in revenue was involved? If this is indeed their position, the Commission might have been spared much argumentation, had it been made clear at the outset.

I now propose to discuss certain financial matters, having in mind the provisions of subparagraph (d) of Paragraph 2 of the Commission's Terms of Reference.

That subparagraph reads as follows:

"d) Review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting (or otherwise) measures conducive to uniformity in such matters, and upon other related problems

such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items;"

There can be little doubt that this subparagraph was included in the Commission's Terms of Reference because of the differences which arose between the railways and the provinces during the 30% Case before the Board of Transport Commissioners. The lack of uniformity in the accounts of the Canadian Pacific and the Canadian National was a source of difficulty. Two major issues developed in this regard -- the different methods of providing for depreciation and the different methods of bringing to account certain corporate revenues.

That seems to be completely confirmed by the fact that subparagraph (d), while directing a review and report upon accounting methods, particularizes by naming "depreciation accounting" and "segregation of assets and revenues" as special matters upon which the Commission must report to the Governor in Council.

Those two matters -- depreciation accounting and the treatment of non-rail income -- were among the most important issues involved in the rate cases before the Transport Board, which culminated in the appointment of this Royal Commission.

I propose to discuss -

- (1) Uniformity in accounting methods and statistical procedures.
- (2) Depreciation accounting.
- (3) Segregation of assets, revenues and other incomes as between rail and non-rail.

(1) UNIFORMITY IN
ACCOUNTING METHODS AND STATISTICAL PROCEDURE

At page 14447, Volume 71, we submitted that your Commission should recommend:

"That the Board of Transport Commissioners be empowered by statute to promulgate a uniform system of accounts for steam railways in Canada generally along the lines of the Accounting Classifications prescribed for United States Railroads by the Interstate Commerce Commission."

We endorse what the Canadian National Railways said at page 81 of its Submission, Exhibit 214:

"A management subject to accountability should not itself decide the accounting rules by which the results of its management are to be judged."

The main purpose of uniform or standardized accounting is that the financial statements of the railways concerned may be clearly understood and properly compared. At the present time the taxation statutes of Canada require that the income of all businesses be properly determined and to that end the accounts of all taxpayers are under close scrutiny by the Department of National Revenue. In like manner the Board of Transport Commissioners should be in a position of knowing that the financial statements of the railways truly represent the operating results and financial position generally on a standardized and uniform basis.

There is general agreement between all parties, Railways and Provinces, that your Commission should make the recommendation I advocate.

For the Canadian Pacific, the witness Mr. J. C. Thompson, F.C.A., expressed his view at page 17541 of

Volume 92 of the Transcript when he was questioned as follows:

"Q. . . . I take it that you are in accord with the views of, I think, everybody else -- that uniformity of accounts is highly desirable?

A. Yes -- I agree to that."

Considerable discussion took place with all witnesses regarding the desirability of permitting an exception to complete uniformity of accounting.

That question arose out of the fact that different methods of depreciation accounting are used by the Canadian Pacific and the Canadian National.

We strongly favour depreciation accounting on a straight line basis. We are prepared, however, to entrust to the regulatory board the determination of the method of depreciation accounting to be used and the selection of the assets to be so depreciated. In our submission, it is imperative that whatever method of depreciation is prescribed such method must be adopted by both railways.

Mr. Thompson, Canadian Pacific's witness, agreed with this contention. At page 17542, Volume 92, he said:

"Q. Now do you say that the railways of Canada, at least the railway by whom you have been retained, should be permitted to continue to depreciate on the user method?

A. That is correct.

Q. Now I suppose, of course, that you are willing to put that matter in the hands of the Board under a general authority and requirement to set up uniform accounts?

A. Well, I think it is, and it repeats what I said yesterday to Mr. Shepard, that the carriers should be able or should have permission to formulate their own methods, as to whether they wish to follow user or straight line, and then submit their methods to the Board and argue the matter out.

Q. And then the Board having the last word of course?

A. I think the Board would have to have the last word."

At page 17544 Mr. Thompson, in answer to a question by the Chairman, stated:

"Well, I think it would be preferable for both railways to follow the same method, and my own view is that they should follow the user method."

At page 17551 the Chairman and Canadian Pacific counsel discussed the question in these words:

"THE CHAIRMAN: Would you go this far then? First we have uniform accounting and then up comes this question, this incidental question of what method of depreciation is to be pursued. You say you would prefer freedom of choice.

MR. EVANS: Yes.

THE CHAIRMAN: And if the Board says no, you are to adopt this one method?

MR. EVANS: We will have to subscribe to that.

THE CHAIRMAN: You think the Board should have that power?

MR. EVANS: Oh, I do not think there is any doubt about that."

Speaking for the Canadian National, Mr. Cooper, Vice-President in charge of Accounting, while strongly advocating the method of depreciation now being used by the Canadian National, stated at page 18873 of Volume 101:

"Q. So it would not be a matter of sitting back and waiting to be asked. If the question of which system of depreciation should be used, you would be prepared to present your views as to the straight line method?

A. Yes.

Q., And you would abide by whatever prescription came from the Board after that consideration?

A. We would have to."

My submission is that your Commission should recommend that the accounts of the Canadian railways should be kept according to standard practices and in conformity with rules prescribed by the regulatory body pursuant to statutory authority,

and

that such rules should prescribe the method or methods of depreciation to be followed and should prescribe that such method or methods must be used by all railways. In other words, there must be uniformity between the railways whatever method or however many methods are prescribed by the Board.

I have proposed no amendment to the Railway Act to deal with the matter of uniformity of accounting and statistical procedures. I suppose and adopt the amendment proposed by Manitoba requiring uniformity of accounts. That amendment is to be found at page 2003 of Volume 108.

(2)

DEPRECIATION ACCOUNTING

The question of depreciation has been dealt with by the Railways and the Provinces in considerable detail, and it is not my purpose to review that evidence to any extent.

The evidence of Mr. Morrison, F.C.A., which appears at pp. 14436 - 14536, Vol. 71, outlines the general position of Alberta upon this question.

At p. 14440 Mr. Morrison said:

"In advocating uniform accounting under statutory authority we include the submission that the basis of depreciation or provision for retirement of assets be uniform in respect of all Canadian railways and that the adoption of a uniform method of depreciation by all railways be strictly enforced.

We recommend that the regulatory body should require that the method of accounting for depreciation on all depreciable assets should be on a depreciation accounting straight line basis, similar to the basis presently required by the Interstate Commerce Commission."

While the classes of assets of the two railways systems which are subject to depreciation are practically the same, there are marked and important differences in the methods used by them in the determination of the amounts which are charged annually as expenses under the various items for depreciation.

As a ready reference, the following summary indicates the extent of the divergence which now exists between the two railways:

<u>Type of Asset</u>	<u>Depreciation Method Used</u>	
	<u>C.P.R.</u>	<u>C.N.R.</u>
Equipment or Rolling Stock	Depreciation Accounting on User Basis	Depreciation Accounting on Straight Line Basis
Depreciable Road Property or Fixed Assets	Depreciation Accounting on User Basis	Retirement Accounting
Non-depreciable Road Property	Renewal Accounting	Retirement Accounting

From this summary it will be seen that there is no uniformity at all in respect of depreciation charges. The annual amounts involved in these depreciation charges are very large sums, being in excess of \$20,000,000 for the Canadian Pacific alone. The basis of charges of this magnitude must be definitely determined and prescribed by the regulatory tribunal.

The Commission will recall that each railway supported its own particular method of depreciation. But, more important, the Commission will also recall that both railways agreed that the final adjudication of which method - and I stress the word "method" not "methods" - of depreciation must be used was for the determination of the regulatory body pursuant to statutory authority.

The views of the Transport Board itself on the point are of interest. At p. 74 of the 21% Case Assistant Chief Commissioner Wardrobe said:

" From a rate-making point of view, however, in Canada to have one of its major railways on one method of depreciation and the other major railway on another leads to some confusion. It is more than difficult to make effective comparisons."

My submission is that your Commission should recommend -

- (1) that the Railway Act be amended to authorize and direct the Board of Transport Commissioners to prescribe for all railways -
 - (a) the classes of property for which depreciation accounting be established and for which depreciation charges may be properly included in operating expenses, and
 - (b) the rate or rates of depreciation which shall be charged with respect to each such class of property subject to the proviso that the method of depreciation accounting and classes of property for which depreciation accounting shall be established shall be the same for all railways.

SEGREGATION OF ASSETS, REVENUES AND
OTHER INCOMES, ETC.,
AS BETWEEN RAIL AND NON-RAIL ITEMS

The Briefs presented by both railways have acquainted the Commission with the fact that certain essential differences exist in the recording of revenues and expenditures by the two railways.

Dealing first with the revenues received, the following differences in treatment have been noted:

Express Earnings

- (a) In the accounts of the Canadian Pacific the earnings from express are divided as between rail and non-rail as follows:

To rail are credited the net earnings from express operations of the Canadian Pacific Express Company, its wholly-owned subsidiary.

To non-rail are credited -

- (a) the net earnings from the financial operations of the Canadian Pacific Express Company, together with
- (b) the dividend which the Canadian Pacific receives on its investment in the shares of the Express Company.
- (b) The Canadian National, on the other hand, operates its Express Service as a department of the railway and all of the net earnings are treated as rail income.

Communications

Here we find the net revenues of the commercial telegraphs and of the leased wire services.

In the accounts of the Canadian Pacific the net earnings are regarded as non-rail income. In the accounts of the Canadian National the net earnings are regarded as rail income.

The two items of Express and Communications are the only points of difference between the Canadian Pacific and the Canadian National in the treatment of revenues.

We would also direct your Commission to other items of income of the Canadian Pacific Railway which have been treated by that company as non-rail income and which, in my submission, should be treated as rail income. A statement of such items is to be found on page 13 of the Judgment of the Board of Transport Commissioners of 20th September, 1949. For the year 1947, including the net earnings from Communications and Express, they totalled the sum of \$2,798,840.

On page 13 of the Judgment, the Board stated with regard to this whole subject:

"Counsel for British Columbia has urged that if the Board should decide that the "Other Income" as a whole is not to be taken into account, the following income items at least should be included with Railway Income because they contend that they are directly connected with the railway services:
viz.

(then follows the list)

The respondents directed the Board's attention to the fact that the Canadian Pacific Express had made a profit of \$253,363 for the year 1947 but paid out to the Canadian Pacific Railway by way of dividends only \$120,000, leaving \$133,363 carried forward in their surplus. They asserted that this sum of \$133,363 should be properly taken up in the Canadian Pacific Railway accounts and included in Rail Income.

Counsel for the respondents have also maintained that if Other Income is not to be considered in fixing a level of freight rates that this Board exercise active control over the establishment of what is rail income and what is Other Income. The foregoing contention points directly to a fundamental difficulty experienced by the Board - that the Railway Act does not, in its present form, give the Board authority to control the accounting procedure of the railways in the manner advocated by Counsel."

It is my submission that all of the income derived from the sources enumerated on page 13 of the Judgment of September 20th, 1949, for the year 1947, should have been considered as income of the rail department and for the reasons which have been already advanced to the Commission. The same is true, of course, with regard to the annual

revenue from these sources in each and every year.

It is possible that there are similar sources of income to those listed on page 13 of the Board's Judgment of 20th September, 1949, which have been incorrectly treated as non-rail income. A closer scrutiny of the accounts may or may not reveal them.

In the matter of the segregation of assets and revenues as between rail and non-rail, my submission is that your Commission should recommend that the regulatory body be charged with the duty of determining the correct distribution of all revenues and expenditures of the railways and, along with that, distribution of assets and liabilities between rail and non-rail operations.

I would emphasize that this determination is of vital importance where, as in the case of both Canadian railways, there are regulated companies operating departments or enterprises some of which are not under the jurisdiction of the regulatory tribunal.

Apportionment of Dividends

In the 30% Case and the 20% Case, one of the major submissions of the Provinces was that, because fixed charges and dividends were corporate obligations, the non-rail income of the railway must provide a portion of the monies required to pay fixed charges and dividends.

In the 30% Case the Board rejected both submissions of the Provinces. On appeal to the Governor in Council those two matters, among others, were referred back to the Transport Board for investigation and action. See P.C. 4678 of 12th October, 1948, page 3, where the Governor in Council said:

"The payment of fixed charges and income taxes are corporate obligations of corporations as such, and the incomes of corporations, whatsoever their source, are liable therefor; provisions to be made for dividends and a surplus are likewise corporate needs and should be so considered. For these reasons, the Committee are of the opinion that some portion of the corporate needs should be borne by the income derived from non-railway operations.

The Committee are further of the opinion that an investigation should be made by the Board in order to determine the apportionment to be made, between railway earnings and other income, of fixed charges, depreciation, income taxes, dividends and surplus..."

In its Judgment of 20th September, 1948, the Board did make an apportionment of fixed charges between rail and non-rail but, as to dividends, the Board did not make any apportionment.

I quite appreciate that this Commission is not sitting as a court of appeal from the Board of Transport Commissioners and, further, I am aware that there is now pending before the Governor in Council an appeal by the Provinces upon this very question of non-apportionment of dividends - among other matters.

In spite of that, I make no apology for bringing the matter to the attention of this Commission because of the express direction given to the Commission to review and report upon the "segregation of assets, revenues and other incomes, etc., as between railway and non-railway items".

Alberta's evidence on this point is contained in the evidence of Mr. Morrison at pages 14442-3 of Vol. 71 and the

cross-examination at p. 14456.

My position can be stated, in a word, to be that I rely upon the Judgment of the Governor in Council in P.C. 4678 and particularly the passage which I quoted above. If, as the Governor in Council has said, provision to be made for dividends is a corporate need and if the revenues of a company are made up from two main sources - for example, as in the case of the Canadian Pacific, the rail enterprise and the non-rail enterprise, then the burden of the dividend provision must fall pro rata upon those two sources of revenue. Accordingly, when the regulatory body is determining the financial need of the railway applying for a freight rate increase, there must be an apportionment of the dividends between rail and non-rail. Only in that way can we be assured that the rail enterprise is carrying no more than its proper share of the financial requirements of the railway enterprise.

The Province of Manitoba has submitted a new Section 325C of the Railway Act to deal with this matter of segregation of assets and revenues between rail and non-rail. The amendment appears at p. 20002 of Vol. 108 of the Transcript. I adopt and support Manitoba's amendment.

CANADIAN NATIONAL CAPITALIZATION

THE YARDSTICK CONCEPT

RATE BASE AND RATE OF RETURN

I now propose to discuss very briefly three closely related matters: Canadian National Capitalization, the Yardstick Concept, Rate Base and Rate of Return.

Canadian National Capitalization is committed to the Commission by paragraph 2(c) of the Terms of Reference, which

reads as follows:

- "2(c) Review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America."

I do not propose to discuss the matter at any length. The Commission heard a great deal of evidence from Mr. Donald Gordon, Mr. Cooper and Mr. Fairweather for the Canadian National.

On behalf of Alberta, I support the proposal made by Mr. Gordon and later amended by Mr. O'Donnell. It is now high time that the Government policy of 1923 be revised and that the Canadian National be rid of the load of debt which it was required to take over from the bankrupt predecessor companies and the unremunerative Government lines. The Canadian National has endeavoured to discharge this obligation but it has become quite obvious that the interest burden is out of all proportion to the present or prospective earning power.

* * * * *

Viewing the matter as it is at the moment, there would seem to be no reason for displacing the Canadian Pacific as the measure or guide for establishing freight rates, in other words, as the yardstick.

The Canadian National must be given an opportunity to earn surpluses and if the suggested re-capitalization will aid, so much the better. They themselves think there is no probability of earning large surpluses - and say that if surpluses are earned the Canadian Pacific will earn larger surpluses. Be that as it may, it is my submission

that the future possibilities should be left to be dealt with as and when they arise.

If the Canadian Pacific is to-day the prescribed yardstick, then it must not be displaced on light grounds. No possible advantage either to the taxpayer or the freight shipper could result from bankrupting the Canadian Pacific Railway.

It would be the simple duty of the regulatory body and indeed of Parliament to see to the contrary. I see no good reason for not relying upon that sense of duty.

But the question may well arise: - would there eventuate circumstances which might warrant the regulatory body examining the operating results of the Canadian Pacific by way of critical comparison of those results with the results of the Canadian National.

I cannot subscribe to the view that forever the Canadian Pacific must remain the yardstick and never must the Canadian National become the yardstick. With respect, I do not think the Commission is called upon to make such a recommendation.

RATE BASE AND RATE OF RETURN

I propose to be very brief in my discussion with the Commission in the matter of rate base and rate of return.

I am opposed to any statutory provision being made which would require the regulatory body to deal with applications for freight rate increases on the basis of awarding a rate of return on a rate base. In my submission, the Board should be left as free as it is at the moment to come to a conclusion with respect to a freight rate increase either by determining the "requirements" of the yardstick company or by finding a rate base for that company and then applying a rate of return to that rate base.

The experience in the United States should serve as a guide. In 1920, Section 15a of the Transportation Act, 1920, was enacted; as a result of that enactment the Interstate Commerce Commission prescribed $5\frac{1}{4}\%$ as a fair rate of return upon which to set freight rates. In 1933 that provision in the statute was repealed.

Section 15a of the Interstate Commerce Act now reads as follows:

- Old Section 15a
Bigham p. 173
- "Sec. 15a (1) When used in this section the term 'rates' means rates, fares, and charges, and all classifications, regulations, and practices relating thereto.
- (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such services; and to the need of revenues sufficient to enable the carriers, under honest economical and efficient management to provide such service."

The situation in the United States, therefore, is that, while the Interstate Commerce Commission has got rid of its statutory obligation to find a rate of return on a rate base,

it nevertheless is free in practice to follow that procedure. In my submission, the regulatory body in Canada should be similarly free.

I am, therefore, opposed to the amendment submitted by the Canadian Pacific as Section 325, subsection 7, which would impose the rigid requirement upon the Board to proceed by no other method than the rate base and the rate of return basis.

MISCELLANEOUS

(1) Reparations

The Canadian Manufacturers Association and the Industrial Traffic League advocated an amendment to the Railway Act dealing with Reparations. The purport of the amendment is to give to the Courts and to the Transport Board power to award damages to persons who have paid freight rates which are held to be unreasonable or unjustly discriminatory. See Transcript p.5727, Vol. 30.

The amendment is wrong in principle.

I cannot agree that the shipper or the consignee or anyone along the way to the person who ultimately bears the freight cost should collect and retain any damages paid pursuant to any statutory provision of the kind advocated by the Canadian Manufacturers Association. No intermediary should be put in a position to collect and retain reparations where he has personally suffered no loss.

(2) Segregation of Freight and Passengers

Alberta supports the amendment proposed by Manitoba. Manitoba proposes a new Section 325A which, among other things, will require the Board in a rate case to have regard to the cost of operating the passenger service.

(3) Carriage of Mails and Troops

This matter is dealt with by Mr. Jefferson at pp.15284 to 15317, Vol. 75.

I agree with the recommendation made to the Commission by the Canadian Pacific that the Railway Act and the Post Office Act be amended so as to put rates of pay for the carriage of mail and troops under the jurisdiction of the Board of Transport Commissioners.

I agree that the railways should be able to include the mail rates and rates for carriage of troops in an application to the regulatory body for a general increase in freight rates.

Section 52 of the Railway Act

In the submission of Alberta, the Commission should recommend that Section 52 of the Railway Act be not repealed. I support Manitoba's suggested amendment in that regard. Far from abolishing the right to go to the Governor in Council to seek redress from the decisions of the Transport Board, that right should be clarified as Manitoba's amendment proposes.

The Canadian Pacific is concerned with the political implications. At p. 148 of Part 1 of its Submission, it says that Section 52 is

"An invitation to the public to have railway problems considered in a political forum and to attempt to have such problems decided on political considerations rather than upon the merits and upon the evidence".

That is a pretty shocking statement to make. It puts upon the lowest possible level the relations between the Government of Canada and those citizens of Canada, including the Provinces of Canada, who feel that injustice has been done them by the regulatory tribunal.

I will content myself with calling to the attention of the Commission the Judgment of the Governor in Council in the 21% case - P.C. 4678.

Does the Canadian Pacific say that "political considerations" dictated the laying down of the principle in P.C. 4678 that non-rail income should bear a share of corporate needs such as fixed charges, dividends and surplus?

We might as well speak plainly about this matter. The people of Alberta would never be satisfied to have the Board of Transport Commissioners the one and final Court of last resort without appeal. The railways are instruments of national policy. If questions of national policy arise, then

it is for the policy-making body - the Federal Cabinet - to review and consider those questions and direct the Board accordingly.

Horizontal Percentage Increase

Alberta takes the position that a straight horizontal percentage increase is discriminatory against long-haul and primary products traffic. With regard to the main traffic flows as they exist within the railway systems to-day, Alberta is located at the outer margin where the effect of freight rate increases is greatest. In our view, the impact of such general increases should be lessened by the fixing of maximum increases on certain traffic. The method of achieving this is to have these limitations prescribed by the Board at the time of its judgment on an application for an increase. The contrary view that individual complaints can be lodged later offers no remedy for this grievance - by that time it is too late, for all practical purposes, for any consideration to be given.

Alberta supports the amendment to Section 325 submitted by the Transportation Commission of the Maritime Board of Trade.

Grade Crossings

I adopt the position taken by Manitoba in this matter.

CANADIAN NATIONAL - CANADIAN PACIFIC CO-OPERATION

Alberta's interest in the co-operation contemplated by the Canadian National - Canadian Pacific Act is in the extent to which such co-operation can be effective in reducing costs and thus reducing the financial requirements of the railways. This was the point raised in the course of the twenty-one percent case. My own position was that there was no information available to the Board on the extent to which all feasible co-operative money-saving projects had

been put into effect.

That position was reiterated in the appeal of the seven provinces to the Governor in Council in the same case. The decision of the Governor in Council to include an examination of this Act in the Terms of Reference to this Commission doubtless arose in part from the discussions before the Federal Cabinet.

In the nature of things, the Provinces are in no position to make recommendations as to specific co-operative proposals that could have been or should be carried out.

It appears to me that sufficient information on this subject can be made available annually through the reports to Parliament as required by the Act. My only suggestion is that both railways be required to report annually to Parliament concerning the nature of the projects considered, approved or put into effect during the year. At the present time the Statute requires a report from the Canadian National alone and the Commission will recall that Mr. Fairweather said that he did not know any report made by the Canadian National under Section 14 of this Act.

(P. 22177 follows)

MR FRAWLEY: Then I will now have to go very quickly through the rest of this. As to the Freight Classification, we say that the classification should be reformed, and that instead of the original ten classes, the new all-Canada scale should have multiple classes based on percentages of present first-class rates which would be designated Class 100.

As to the mixing privileges, we are against that. We say that militates against Western Canada. We see no reason why we---

THE CHAIRMAN: Is anybody left for it now?

MR FRAWLEY: Oh, I think that the railways take a sort of neutral stand and say that they don't care, that we cannot make up our minds about it; but now as far as I am concerned, I am making up my mind for the Province of Alberta; we ask to be put on the same basis as other people, as Eastern Canada.

THE CHAIRMAN: I notice at the top of L-4 you talk about neutrality; you mean the railways' neutrality, do you?

MR FRAWLEY: Yes, my lord.

THE CHAIRMAN: You mean the railways?

MR FRAWLEY: Yes, my lord.

Now, going to the financial part of my brief, I discuss uniformity in accounting methods and statistical procedures.

THE CHAIRMAN: You begin that at?

MR FRAWLEY: I begin that at M-1, sir, and that runs through to M-23.

In the matter of uniform accounting, I only want to make it clear, sir, that in my submission this Commission should recommend that there must be one system of accounting prescribed for the Canadian railways.

On this vexed question of depreciation accounting, as just one matter, I do not care whether the user method which the Canadian Pacific favours or the straight-line method which the Canadian National favours be adopted, but the Board must have the final determination of that, and I think that really in the end---

THE CHAIRMAN: Do you go so far as to say that there must be just the one method?

MR FRAWLEY: Just the one.

THE CHAIRMAN: For both railways?

MR FRAWLEY: Yes, just the one, and it can be either one, my lord.

Then I have a separate section running from M-9 to M-11 on depreciation accounting, and there I call attention to what the Board itself has said about it at page 74 of the 21% Case, where Assistant Chief Commissioner Wardrope said that it is more than difficult to make effective comparisons when one of the major railways is operating on one system of depreciation and the other major railway on another system of depreciation; that leads to confusion, and it is more than difficult to make effective comparisons. That alone would be my justification for suggesting that that must disappear, that in the long run there will have to be a contest, I take it, between the Canadian National and the Canadian Pacific before the Transport Board, and it will be then determined whether it shall be on the user basis or the---

THE CHAIRMAN: Then this is clear: You would not leave the Board free to allow the railways to be free?

MR FRAWLEY: No; that is right, sir. There must be a final determination. And I think, sir, that I would like to call attention, because I took the pains to call attention, to what Mr. Evans said to you, sir, at page 17551,

and that has been put together on page M-6. I say at the bottom of page M-5:

In our submission, it is imperative that whatever method of depreciation is prescribed such method must be adopted by both railways.

I quote what Mr. Thompson said to me in volume 92, at page 17542, when he agreed with me that the Board must have the last word. He said:

"I think the Board would have to have the last word."

Then at page 17551 Mr. Evans discussed it with you, Mr. Chairman, and this is what is recorded:

"THE CHAIRMAN: Would you go this far then? First we have uniform accounting and then up comes this question, this incidental question of what method of depreciation is to be pursued. You say you would prefer freedom of choice.

MR EVANS: Yes.

THE CHAIRMAN: And if the Board says no, you are to adopt this one method?

MR EVANS: We will have to subscribe to that.

THE CHAIRMAN: You think the Board should have that power?

MR EVANS: Oh, I do not think there is any doubt about that."

Then I quote what Mr. Cooper of the Canadian National said, in volume 101, at page 18873:

"Q. So it would not be a matter of sitting back and waiting to be asked. If the question of which system of depreciation should be used, you would be prepared to present your views as to the straight line method?

A. Yes.

Q. "And you would abide by whatever prescription came from the Board after that consideration?

A. We would have to."

Then, my lord, I would like to pass now to the matter of Segregation of Assets and spend very little time there.

THE CHAIRMAN: What page is that?

MR FRAWLEY: That is page M-12. The sub-paragraph of my brief begins at M-12 and runs through to M-18, sir.

There I say that I agree with the suggestion which Manitoba has proposed, namely, a new section 325C of the Railway Act to deal with this matter of segregation of assets and revenues. In a word, I say that the position is not a difficult one. The regulatory body must be able to say what are rail assets and what are non-rail assets, what are rail revenues and what are non-rail revenues.

Then, my lord, I come to page M-19, and I would like to read that. I think we need not be too long about that.

"I now propose to discuss very briefly three closely related matters: Canadian National Capitalization, the Yardstick Concept, Rate Base and Rate of Return.

Canadian National Capitalization is committed to the Commission by paragraph 2(c) of the Terms of Reference, which reads as follows:"

And I do not need to read it.

"I do not propose to discuss the matter at any length. The Commission heard a great deal of evidence from Mr. Donald Gordon, Mr. Cooper and Mr. Fairweather for the Canadian National.

On behalf of Alberta, I support the proposal made by Mr. Gordon and later amended by Mr. O'Donnell. It is now high time that the Government policy of 1923 be

revised and that the Canadian National be rid of the load of debt which it was required to take over from the bankrupt predecessor companies and the unremunerative Government lines. The Canadian National has endeavoured to discharge this obligation but it has become quite obvious that the interest burden is out of all proportion to the present or prospective earning power."

Passing to the matter of yardstick, I say:

"Viewing the matter as it is at the moment, there would seem to be no reason for displacing the Canadian Pacific as the measure or guide for establishing freight rates, in other words, as the yardstick."

(Page 22183 follows)

Canadian National must be given an opportunity to earn surpluses, and if the suggested recapitalization will aid, so much the better. They themselves think there is no probability of earning large surpluses -- and say that if surpluses are earned the Canadian Pacific will earn larger surpluses. Be that as it may, it is my submission that the future possibilities should be left to be dealt with as and when they arise.

If the Canadian Pacific is today the prescribed yardstick, then it must not be displaced on light grounds. No possible advantage either to the taxpayer or the freight shipper could result from bankrupting the Canadian Pacific Railway.

It would be the simple duty of the regulatory body and indeed of Parliament to see to the contrary. I see no good reason for not relying upon that sense of duty.

But the question may well arise:- Would there eventuate circumstances which might warrant the regulatory body examining the operating results of the Canadian Pacific by way of critical comparison of those results with the results of the Canadian National?

I cannot subscribe to the view that forever the Canadian Pacific must remain the yardstick and never must the Canadian National become the yardstick. With respect, I do not think the Commission is called upon to make such a recommendation.

RATE BASE AND RATE OF RETURN

I propose to be very brief in my discussion with the Commission on the matter of rate base and rate of return.

I am opposed to any statutory provision being made which would require the regulatory body to deal with applications for freight rate increases on the basis of awarding a rate of return on a rate base. In my submission, the Board should be left as free as it is at the moment to come to a conclusion with respect to a freight rate increase either by determining the "requirements" of the yardstick company or by finding a rate base for that company and then applying a rate of return to that rate base.

The experience in the United States should serve as a guide. In 1920, Section 15A of the Transportation Act 1920 was enacted. As a result of that enactment the Interstate Commerce Commission prescribed 5 3/4% as a fair rate of return upon which to set freight rates. In 1933 that provision in the Statute was repealed. Section 15A of the Interstate Commerce Act now reads as follows. May I say, sir, that the old Section, as I indicate on my page M-23 the old Section 15A can be found in Mr. Bigham's book at page 173. I reproduce the new Section 15A.

SECTION 15A:-

"(1) When used in this section the term 'rates' means rates, fares and charges, and all classifications, regulations and practices relating thereto.

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall give due

consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable the carriers, under honest economical and efficient management to provide such service."

You will see that any requirement to find a rate base and rate of return on that rate base, as it was in the original Act, has disappeared.

The situation in the United States, therefore, is that, while the Interstate - -

THE CHAIRMAN: It says:-

"In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration, among other factors....."

At the moment, what use is made of those words?

MR. FRAWLEY: "Among other factors"?

THE CHAIRMAN: I mean in practice.

MR. FRAWLEY: I think perhaps that was intended not to limit the Commission to the effect of rates on the movement.

THE CHAIRMAN: Can you tell me how that was interpreted?

MR. FRAWLEY: No, I have no cases on hand

to tell you about it.

The situation in the United States therefore, is that, while the Interstate Commerce Commission has got rid of its statutory obligation to find a rate of return on a rate base, it nevertheless is free in practice to follow that procedure.

THE CHAIRMAN: Does it follow it?

MR. FRAWLEY: That seems a difficult matter to determine. One would think that it does. The best we can find out is that it is difficult to know what it is that finally determines the rate increase of 6% or 12%, perhaps because of the kind of statute they now have. They do have the valuation of the railways and they could if they wish -- frankly I don't think anyone could say that is just how the freight rates are arrived at in the United States.

I say that while the Interstate Commerce Commission has got rid of its statutory obligation to find a rate of return on a rate base, it nevertheless is free in practice to follow that procedure. In my submission the regulatory body in Canada should be similarly free.

I am therefore opposed to the amendment submitted by the Canadian Pacific as Section 325, sub-section 7, which would impose the rigid requirement upon the Board to proceed by no other method than the rate base and the rate of return basis.

THE CHAIRMAN: Doesn't that amendment draw forward on account of the question of the recapitalization of the Canadian National being put before it?

MR. FRAWLEY: Well, it perhaps is so.

THE CHAIRMAN: However, we will have somebody else on that, never mind.

MR. FRAWLEY: I might tell you, I might answer that question.

THE CHAIRMAN: I think it arose in that connection as a safeguard. I suggest you don't waste any of your time on it because Mr. Evans will have to state the amendment.

MR. FRAWLEY: Here it is, my lord. It was an addition -- no, I cannot say, sir. I did not make a note of the date on which I received this amendment. They are proposing perhaps additional amendments to the Railway Act, and the precise date on which I received them I didn't make a note of, but they were made at the same time that their suggestions with regard to crossing protection and so on were made. Whether they were made after Mr. Gordon's proposal was submitted, I don't know. It is for them to say.

Now, I don't propose to read the "Miscellaneous" section because those are relatively unimportant. I reject the suggestion that there should be legislation with regard to reparations. I support what Manitoba has proposed with regard to the segregation of freight and passenger. I support what the Canadian Pacific has suggested by way of amendment regarding the carriage of mail and troops; and with regard to Section 52 of the Railway Act, I ask that it be continued. I deal very briefly with the Canadian Pacific's objection to that. I say that the Federal Cabinet must be retained - -

THE CHAIRMAN: Yes, that is the appeal.

MR. FRAWLEY: Yes, the appeal section, sir, and with respect to the horizontal percentage increase I support the amendment to 325 proposed by the Transportation Commission of the Maritime Board of Trade.

THE CHAIRMAN: You support it? You say that, do you?

MR. FRAWLEY: I say that, sir. Then I say with respect to grade crossings, I adopt the position taken by Manitoba with regard to the matter of grade crossings. On Canadian Pacific Co-operation I simply say, sir, that it would appear to be sufficient if there were reports required annually from each railway. My suggestion is that both railways be required to report annually to Parliament separately the nature of the projects considered, approved or put into effect during the year. At the present time the Statute requires a report from the Canadian National alone, and the Commission will recall that Mr. Fairweather said he didn't know of any report made by the Canadian National under Section 14 of this Act. When I asked Mr. Fairweather about policing the Act, he said he thought there was sufficient policing by the fact that Parliament was told about it. Then when I said: Is Parliament told about it? -- he told me there was no special report under Section 14 but he said he thought there might be something in the Annual Report of the company. I go further and say, not only the Canadian National, but why leave out the Canadian Pacific? -- that each railway should be required to make an annual report to Parliament with respect to what has been accomplished under this Statute.

THE CHAIRMAN: Is that all you are asking for?

MR. FRAWLEY: That is all I am asking for in connection with that.

THE CHAIRMAN: You are not asking that the Board be required to take this into consideration and so on?

MR. FRAWLEY: No, my lord, I am contenting myself with suggesting that there should be an annual report to Parliament. That concludes my argument and I am obliged to your lordship. There are one or two short matters, I think, . which I may want to raise for one minute to offer a brief amendment of some kind. I think perhaps there are only one or two matters left during this morning's discussion.

THE CHAIRMAN: Very well, Mr. Brazier.

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ARGUMENT SUBMITTED ON BEHALF OF THE
PROVINCE OF BRITISH COLUMBIA

MR. C. W. BRAZIER

MR. BRAZIER: In opening my final statement to this Commission on behalf of British Columbia, I wish to recall to you the words which the Honourable Mr. Wismer, Attorney General of British Columbia, used in welcoming the Commission to our province. He said in part: "Let me say for my Government that while we are most certainly mindful of the good of the people and industries in this Province, we are not indifferent to the problems of the nation as a whole. In our approach to the Dominion-Provincial conferences we have endeavoured to avoid a parochial point of view and in like manner we approach the problems associated with transportation. British Columbians do not wish for special favours. At the same time, however, we strenuously object to unfair and discriminatory treatment". (Vol. 13, p. 2297).

For many years British Columbia fought against a rate discrimination imposed on traffic in our Province because we lived in that part of Canada which contained the great mountain ranges of this country. The railways said that the costs of operation in the mountain territory were higher than in the Prairie Provinces, but if that was the test there were undoubtedly other territories in Canada where the costs of operation were higher also but no attempt was made in those other territories to impose higher rates because of higher costs. Further, we said if regional costs

were to be taken into consideration regional revenues must also be examined. British Columbia believes that national problems, of which railway transportation is one, must be considered from the point of view of Canada as a whole, and the same rules must apply to each part of Canada. Fortunately we succeeded in having that particular discrimination removed within the last year so far as freight rates are concerned. One further glaring example of such unfair discrimination remains today in British Columbia, and that is in regard to passenger fares. The basic passenger fares in British Columbia are one-half of a cent per mile higher than in the rest of Canada. I think you can reasonably conclude, and this is a matter which I will deal with later, that passenger traffic as a whole is carried at a loss, but no where else in Canada do the railways suggest that they apply the principle of cost and value of service in fixing the passenger fares except in British Columbia. Does anyone suggest that passenger fares in Newfoundland are related in any way to the cost of the service rendered? Yet, when Mr. Walker, Chairman of the C.P.R., was questioned about the higher fare in British Columbia, he gave the following evidence. (Vol. 64, pp. 13491 - 13492).

"Mr. BRAZIER: Mr. Walker, in answer to one question which my friend Mr. Shepard put to you, I think you made this statement -- and you will correct me if I have not got it down quite correctly -- you said: 'We believe in the equality of rates throughout the country.'

A. Yes.

Q. You stated that as a general principle of the Company?

A. Yes.

Q. I want to direct your attention, Mr. Walker, to the fact that at the present time both the Canadian Pacific Railway and the Canadian National Railways charge a higher basic passenger fare in parts of Alberta and in British Columbia. Is that not correct?

A. I think it is.

Q. Half a cent per mile higher in British Columbia than in the rest of Canada?

A. Yes.

MR. O'DONNELL: Because of the rarified atmosphere.

MR. BRAZIER: Q. Can I take it from your statement as to equality of rates that the Canadian Pacific Railway would be quite willing to place passenger fares in British Columbia on the same basis as the rest of Canada?

A. No, I do not think so.

Q. That is another application we will have to make to the Board?

A. Equality is not necessarily uniformity.

Q. Not in the case of passenger fares?

A. No. It depends on the cost of service

and the value of service.

Q. You still adhere to the principle that if cost of service in one particular region of the railway is higher than it is elsewhere, you are justified in having rates higher in the one region than elsewhere?

A. Yes, and I find myself in distinguished company in thinking so.

Q. So I assume then that the official attitude of the Company has not changed since the Mountain Differential was removed on the freight traffic?

A. No."

COMMISSIONER INNIS: What part of Alberta is affected by this?

MR. BRAZIER: The rate division is made at Edson on the Canadian National railway, and it is practically on the border of Alberta so far as the C.P.R. On the southern line it is Crows Nest, I believe.

THE CHAIRMAN: How does the rarified atmosphere affect the cost of operation?

MR. BRAZIER: I have no idea.

THE CHAIRMAN: That is not explained.

MR. BRAZIER: That is Mr. O'Donnell's comment. I think Mr. O'Donnell was just being a little facetious at that point.

I particularly call the Commission's attention to Mr. Walker's statement. He says:

"It depends on the cost of service and the value of service."

At the same time if we look at the C.P.R. submission when dealing with this matter, in Part I, page 124, they make this statement:

"Since then air and highway transportation have grown to such an extent that it is out of the question to establish passenger rates in relation to cost of service. . . ."

Yet we have Mr. Walker stating that in so far as British Columbia is concerned because they have the mountains there, and everybody can see and appreciate the difficulties the C.P.R. has in crossing them, for that reason they are justified in imposing a higher charge on traffic in our province.

THE CHAIRMAN: Where is that reference you just read?

MR. BRAZIER: Page 124 of Part I of the C.P.R. submission. When I questioned Mr. Fairweather about the same subject I must say that Mr. Fairweather appeared to me to be a most competent and fair-minded witness. He had this to say: (Volume 110, page 20232)

"MR. BRAZIER:

Q. You are aware, Mr. Fairweather, I presume, that the Canadian National Railways charge a higher passenger fare in British Columbia than it does in the rest of Canada?

A. I really was not aware of that, no.

Q. If I state that to you as a fact, do you know any reason why that would be justified from the railway's point of view?

A. I can think of many reasons.

Q. I mean in comparison with other parts of Canada?

A. I would say if we can collect the revenue we would be very foolish not to."

The answer of these Executives of the two Railways clearly indicates, I submit, the attitude of

railway officials generally to regional discriminations, namely, that we will do whatever we can to prevent their removal since we need the little extra revenue they provide. It is just such an attitude which has caused so many to lose sympathy with the plight of the railways. If the railways seriously mean that they will accord the same treatment to all parts of Canada they should now prove their good faith by immediately reducing the passenger fares in British Columbia. The total revenue involved cannot be large but the railways will be able to demonstrate that they are to be taken seriously when they say they believe in the equality of rates wherever possible.

This leads me to a statement of what British Columbia thinks should be a fundamental finding of this Commission, namely that all rates and tolls in Canada should be equal wherever this is possible, and if there are to be exceptions from this general rule, then the exceptions should apply in the same manner to all parts of the country.

THE CHAIRMAN: Do you elucidate that anywhere by an amendment?

MR. BRAZIER: Yes, I do a few pages later.

If, for instance, the railways are to be permitted to publish competitive rates, and I am not suggesting for a moment that they should not have that privilege, then the rules governing competitive rates should be the same in British Columbia as in Alberta or Ontario or any other part of Canada. Our two great railway systems are national undertakings, and all users of them should be entitled to equal treatment. In a country as large and varied as Canada, it is practically impossible to say that traffic in one part of the country

is being carried under similar conditions as traffic in another part, but providing there is substantially uniformity in mileage and loading, I submit the rates should be equal. I say that the fruit grower in British Columbia should not have to pay any more to ship his apples 500 miles by rail than the fruit grower of Ontario, and in this I am only speaking of the normal rates.

THE CHAIRMAN: What is meant by "normal rates"?

MR. BRAZIER: Those are the standard mileage rates and the commodity mileage rates. I am not referring there to competitive rates.

In view of the many decisions of the Board of Transport Commissioners on this subject, I am of the opinion that to establish this principle section 314 of the Railway Act should be amended by striking out the words "under substantially similar circumstances and conditions" and the words "passing over the same line or route" in subsection 1 of that section so that it would read as follows, namely --

THE CHAIRMAN: You would have the subsection as you have it there?

MR. BRAZIER: Yes, just striking out in the first line of the printed Railway Act the words "under substantially similar circumstances and conditions" and the words "passing over the same line or route". Therefore the section would then read:

"All tolls shall in respect of all traffic of the same description and carried in or upon the like kind of cars or conveyances be charged equally to all persons at the same rate; whether by weight, mileage or otherwise."

COMMISSIONER INNIS: How does this amendment differ from that of Mr. Frawley? Does it differ much?

MR. BRAZIER: I think Mr. Frawley --

THE CHAIRMAN: Mr. Frawley's amendment just provided that all shippers must pay the same rate from point A to point B.

MR. BRAZIER: This would go further than that.

THE CHAIRMAN: Which is the law anyhow?

MR. BRAZIER: I think so. I think this would go further and say, as I put it, that for 500 miles out of the Okanagan the rate should be the same as for 500 miles out of ^{an} Ontario point. There may be no connection between the two shipments.

THE CHAIRMAN: You would take away from the Board the power they have to consider dissimilar circumstances and conditions. Whatever the respective circumstances or conditions might be railway rates must remain the same?

MR. BRAZIER: That is right. I say in a country the size of Canada it is far too easy to find different circumstances and conditions in every part of the country so that you can almost automatically say that the Board of Transport Commissioners and the railways are able to point out some differences in conditions which would warrant a different rate.

(Page 22200 follows)

THE CHAIRMAN: That would tend to a levelling of rates throughout the whole country, would it not?

MR. BRAZIER: With the exception of your competitive rates. At this point I should like to refer the Commission to a recent judgment of the Board of Transport Commissioners.

THE CHAIRMAN: In which case is that?

MR. BRAZIER: It is an application of the Granby Consolidated Mining and Smelting Company. It is an operation in the province of British Columbia.

THE CHAIRMAN: In British Columbia, did you say?

MR. BRAZIER: Yes.

THE CHAIRMAN: What was the name again?

MR. BRAZIER: The Granby Consolidated, Mining, Smelting and Power Company Limited. The judgment is dated February 18 of this year. This was a case where the Granby people were making an application to the Board of Transport Commissioners to the effect that the railway should supply them with details as to the cost of operation so far as the Granby Company was concerned. The C.P.R. haul ore from the mine to the mill, and then they haul it from the mill down to Huntingdon where it is transshipped to an American railroad and taken to Tacoma for smelting.

THE CHAIRMAN: It undergoes some in this country?

MR. BRAZIER: Yes, it is smelted there, and the concentrates are sent forward. Their application was for a lower rate than was being charged. In that case they made this application for particulars as to the cost to the railway of the particular operation. I should like to refer the Commission to two sentences in that judgment, which read as follows:

"The Board, in dealing with the reasonableness of rates in the many cases dealt with, has never

found it possible to lay down a precise formula whereby the reasonableness of a rate could be accurately determined. In all of its experience it has found that many varying factors enter into each case. "

THE CHAIRMAN: Where is this to be found?

MR. BRAZIER: Unfortunately, my lord, I just have this copy.

THE CHAIRMAN: What is the date of it?

MR. BRAZIER: The judgment is dated February 18, 1950. I have not checked to see whether it is in the bound copies of judgments, orders and regulations.

THE CHAIRMAN: We^{shall} have copies of it forwarded.

MR. BRAZIER: I am just suggesting that that emphasizes the point I am making, that conditions vary greatly throughout Canada.

THE CHAIRMAN: No doubt the company here asserted that the rate was unjust and unreasonable.

MR. BRAZIER: Yes.

THE CHAIRMAN: What did the Board do about it in the result?

MR. BRAZIER: The application was refused and I understand that a somewhat reduced rate was granted by the railway shortly afterward, so that the case itself will probably never be heard of again.

THE CHAIRMAN: Settled out of court?

MR. BRAZIER: Yes.

I think everyone realizes that a complex rate structure such as we have in Canada cannot be revised overnight or perhaps within a year or two thence, but this should be the definite goal which any rate-making body should strive to attain. The obvious place to make a start on such a revision is with the standard mileage

class rates, first, because they are the basic rates of the structure, and secondly, because we have been advised that probably only 15 per cent of the traffic is carried on these rates. This would provide a uniform basis for other rates in the future, and most likely cause very little disruption to the business or industry of the country.

THE CHAIRMAN: You say that fifteen per cent of the traffic is carried on the standard rates?

MR. BRAZIER: I think in the 30% Case that was mentioned.

THE CHAIRMAN: I think we were told that it was much less than that.

MR. COVERT: My understanding is that it is only about five per cent.

THE CHAIRMAN: Yes, we were told that it was less than five per cent. Did Mr. Jefferson not tell us that?

MR. EVANS: I think about five per cent.

MR. BRAZIER: That would make the position even stronger. I am probably referring there to the percentage of traffic that was affected by the mountain differential.

In adopting such a plan, the railways state that they wish to be assured that there is to be no loss in revenue to them, and I think this is a reasonable request. Yet the adoption of uniformity should not be held up indefinitely for fear that there may be some loss of revenue. Surely rates somewhere between the present prairie and eastern scales will give the railways approximately the same revenue and permit this important step in equalization to be taken at an early date. I submit that it will be more in the interests of the railways themselves to see that uniformity is adopted as

soon as possible than to themselves with any small loss of revenue that may result from putting into effect such a plan of equalization.

THE CHAIRMAN: Do I understand that you concede that this uniformity you wish to have should not cause any loss of revenue except possibly a small amount to the railways?

MR. BRAZIER: Yes. I presume it will be a matter as to which only experience will tell whether the revenue received under the new rate is what they are now receiving. But it is a matter upon which you cannot be too precise.

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Therefore, I submit that the most essential recommendation your Commission can make in regard to the rate structure of Canada is that equalization of rates in its true sense be undertaken at the earliest possible date and that whatever statutory changes are required to effect this should be made at once.

THE CHAIRMAN: Just a minute. As to equalization of rates, that is a duty that is cast upon the Board under that recent Order-in-Council.

MR. BRAZIER: Yes. But they still have in that Order in Council these words, "under substantially similar conditions".

THE CHAIRMAN: That is in that order-in-Council?

MR. BRAZIER: That is still in the Order-in-Council.

THE CHAIRMAN: I see. In dealing with that Order-in-Council, you think that those words should be deleted?

MR. BRAZIER: They should have been deleted. I think that wording is taken from previous Orders-in-Council.

THE CHAIRMAN: What is the number, again, of that Order-in-Council?

MR. EVANS: It is P.C.1487.

MR. BRAZIER: The Order-in-Council which instructed the Board to make the general freight rate investigation in 1947 was in similar terms. Yet we found that there was continued dissatisfaction throughout Western Canada after that investigation because there had been no real equalization of rates. Too many reasons were found whereby there should be differences in rates in different parts of the country.

The Board of Transport Commissioners is, I understand, starting its general freight investigation this Fall and unless they are required to follow this principle at

that time it may be many years before there is an opportunity for a general revision of rates.

I think it is appropriate at this time to make some observations upon British Columbia's position in the Canadian Federation. British Columbia was a separate crown colony when confederation was conceived and became a reality, but it was immediately apparent to the political leaders of that time that if the Northern half of North America was to remain in the British Empire, it was necessary to extend the boundaries of the new confederation to the Pacific Coast. A vast undeveloped territory lay between the confederated colonies and the crown colonies of British Columbia. It is of historical record that there were many who lived in British Columbia at that time who strongly favoured joining the United States of America. Sir John A. MacDonald saw the danger of this feeling growing unless immediate steps were taken to bring British Columbia into confederation.

This was only feasible as some means of overland communication with the crown colony could be established, and the undertaking which the Dominion gave to the people of British Columbia as a consideration for joining confederation was the early construction of a line of railway connecting British Columbia with the eastern provinces.

In that regard, my lord, may I just point out that in the "Order of Her Majesty In Council admitting British Columbia into the Union" of May, 1871, one of the provisions of that Order - and it is number 11, - reads as follows:

"11. The Government of the Dominion undertakes to secure the commencement simultaneously, within two years from the date of the Union, of the construction of a railway from the Pacific towards the Rocky Mountains, and from such point as may be selected, east of the

Rocky Mountains, towards the Pacific, to connect the seaboard of British Columbia with the railway system of Canada; and further, to secure the completion of such railway within ten years from the date of the Union."

With the completion of the C.P.R. to the Pacific Coast in 1885, the province began to expand. Although its growth was not spectacular for some years, the province was richly endowed with natural resources and with their development an inevitable expansion took place, an expansion that has attained great proportions in the last ten to fifteen years.

Let me quote briefly from the Budget speech of the Minister of Finance for 1949 which was filed as exhibit 35 before the Commission. He makes this statement at page 54. He is dealing there with the subject of British Columbia's position in the Canadian economy.

THE CHAIRMAN: Mr. Brazier, we shall begin with that this afternoon. I wish to state now that the Commission will sit this afternoon continuously until ten minutes after four, and then will adjourn until Thursday.

The Commission adjourned at 1.00p.m. to meet again at 2.45 p.m.

Ottawa, Ontario,
Tuesday, May 9, 1950.

AFTERNOON SESSION

ARGUMENT BY MR. BRAZIER RESUMED

THE CHAIRMAN: Very well, Mr. Brazier.

MR BRAZIER: "As a historical event, British Columbia's entry into Confederation can be but viewed as a recent occurrence. Yet, in less than eighty years, a population of 36,000 has grown to 1,082,000. Vancouver, which did not exist as a city in 1871, to-day has a population estimated to exceed 370,000; and Victoria, with a population of 3,270 in 1871, is now represented by Greater Victoria with over 100,000 in population. In this brief period, the total ratio of British Columbia's population to that of the Dominion has risen from 1 per cent to nearly 9 per cent. In 1871 there were no industries of any size in this Province; to-day British Columbia is the third largest producer in the Dominion.

Those conversant with conditions to-day find it difficult to believe that, when the 'terms of union' were debated at Ottawa, there were many in the East who were firmly convinced that British Columbia's inclusion in the federation would prove a constant financial liability to the Dominion.

Among the Fathers of Confederation, even the most optimistic could not envision British Columbia as the outlet it is to-day for the vast amount of Canada's produce destined to all parts of the world; neither could they dream that this Province, in so short a time, would take the commanding position it has as an industrial area, nor that it would become the mecca to which thousands yearn to come."

At this point, I would like to refer very briefly

to the economy of British Columbia in its relation to the rest of Canada and the outside world. It can be said that British Columbia has an export economy. Its basic industries of lumbering, fishing, mining and agriculture look to other parts of Canada and foreign countries for their principal markets.

In the present period of disrupted international trade we have had to look more and more to the other provinces of Canada and to the United States for our markets. An increasingly large proportion of our lumber production is being sold in the United States and the same is true of our agricultural production. If this trend should continue, the railways will undoubtedly benefit by an increased volume of traffic.

Like all pioneer communities, British Columbia has in the past looked to more industrialized areas for the greater part of its manufactured goods. The distance which such goods must be transported is great -- further than any other part of Canada -- and as the rates for transportation have gone up, it has encouraged the development of local industries. I quite frankly state that there are industries in British Columbia which would welcome a further 25% or even better still, a 50% increase in freight rates, since it provides such industries with protection in the nature of a tariff.

THE CHAIRMAN: Pardon me a moment. You say:

"The distance which such goods must be transported is great -- further than any other part of Canada -- and as the rates for transportation have gone up, it has encouraged the development of local industries."

What does the word "local" mean there?

MR BRAZIER: Local to the Province of British Columbia.

THE CHAIRMAN: British Columbia?

MR BRAZIER: Yes, -- manufacturing industries that have grown up there because of the high freight rates from Eastern Canada.

THE CHAIRMAN: That is, the industrialists had to go out there where the raw material is.

MR BRAZIER: That is right.

While it could be said that lower freight rates may retard this development this trend will, in my opinion, become stronger as the population of the province increases. While undoubtedly the larger part of our manufactured goods have been purchased in Eastern Canada, it must be borne in mind that British Columbia is a large potential market for goods of other countries, particularly Great Britain, and with the possibility of Japan entering the market, again in the future. It has been reliably reported that in 1949 Austin cars made in Great Britain out-sold Fords in British Columbia by three to two. The British manufacturer has the advantage of low cost water transportation to this market, while today our Canadian railways are charging the full class rate on shipments of cars to Vancouver.

We wish to sell our lumber and fish in the British market, and we seem to be only too willing to buy British manufactures in return. Is it to be within the power of the Canadian railways to change or interfere with this trend in order to obtain further traffic, or must their rate-making be subject to such control that they will not be permitted to do so?

The policy of the Dominion Government today is to encourage trade with Great Britain but it is within the power of the railways to discourage this trade in favour of eastern Canadian manufacturers by rate adjustments. This being so it would appear there is a need for coordination between the Dominion trade and transportation authorities. What form this coordination should take, I am not prepared to say.

THE CHAIRMAN: Will you tell me what you mean by coordination?

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MR BRAZIER: Well, my lord, take the example of iron pipe. Considerable iron pipe before the war was purchased in Great Britain. During the war we looked to Eastern Canadian sources for our supply, and it was not until about a year or so ago that the British manufacturers re-entered the market. As soon as they did, the Canadian railroads reduced their rates on iron pipe from Canadian manufacturers.

THE CHAIRMAN: So you have the two sources of supply.

MR BRAZIER: Two sources of supply; but by the adjustment of rates which they made, they made it impossible for the British manufacturer to compete in the Vancouver market on steel pipe.

THE CHAIRMAN: They drove them out, did they?

MR BRAZIER: Yes. The freight rate was just sufficient to make the difference---

THE CHAIRMAN: What is your position about that?

MR BRAZIER: I merely say, my lord, because that power rests with the railways to interfere with international trade, which is within the jurisdiction of the Dominion Government, it would appear that some form of co-ordination between the trade departments and the transportation authorities is necessary.

THE CHAIRMAN: Well, by trade you mean tariffs, customs tariffs and so on, British preferences and all the rest of it?

MR BRAZIER: No, I do not think it means that.

THE CHAIRMAN: You would not establish quotas, would you?

MR BRAZIER: No, not quotas at all; but whether or not the railways should be permitted by the transportation authorities, the Board of Transport Commissioners, to inter-

fere---

THE CHAIRMAN: Do you mean the Board of Transport Commissioners?

MR BRAZIER: Yes, they would be; and I presume through the Minister of Transport it would have to be dealt with on a high level in the Cabinet. But here you have the Cabinet saying, "We want you to buy more goods in Great Britain," and the railways in fact working towards the other end.

THE CHAIRMAN: Are you looking for another subsidy for the railways?

MR BRAZIER: No, not at all; but the railways have it at the present time within their power to adjust their---

THE CHAIRMAN: Well, what is the effect on British Columbia?

MR BRAZIER: We would probably, in that particular instance, purchase our goods from Great Britain, as being the cheaper source of supply.

THE CHAIRMAN: You say the cheaper source of supply?

MR BRAZIER: Yes, if the rates are kept at their normal level by the Canadian railways, as was proved by the fact that the British manufacturer came in there and did outsell the Canadian manufacturer until the rates were adjusted.

THE CHAIRMAN: Then do you say now that what the railways did has increased the price of these commodities to you?

MR BRAZIER: No, it has not, but it has interfered with---

THE CHAIRMAN: I want to know what you are complaining about.

MR BRAZIER: I am not complaining. I am trying to point out a situation of the power that is within the railways to interfere with an established trade policy of the Dominion Government.

THE CHAIRMAN: Of course, that is why they make these transcontinental rates, which other people have been complaining about. It is to meet that very kind of competition, isn't it?

MR BRAZIER: No. The transcontinental rates essentially are to meet the water competition between Eastern Canada and the Pacific Coast.

THE CHAIRMAN: Not necessarily.

COMMISSIONER ANGUS: It is market competition.

MR BRAZIER: It is a form of market competition. It is a very difficult question, I quite appreciate, my lord.

THE CHAIRMAN: You are not taking sides on it?

MR BRAZIER: No, but I do suggest that this is one field in which co-ordination in the Dominion Government is required.

THE CHAIRMAN: You mean something like an allotment of so much to the British shipper?

MR BRAZIER: No, but I think it should be decided by the Dominion Cabinet whether the policy of the railways is to take preference over the policy of the Government in encouraging trade with Great Britain.

THE CHAIRMAN: Yes, but the Government also has a policy in respect of Canadian railways.

MR BRAZIER: Yes, and they must make the choice as to which, in a case such as this, is to prevail.

COMMISSIONER ANGUS: Is what you are saying, Mr. Brazier, that the real competitor of the Canadian exporter is the domestic manufacturer?

MR BRAZIER: Yes.

While British Columbia is the third province of Canada by area and population, the population is concentrated in one relatively small area and in this British Columbia differs from the other provinces. Well over one-half of our population lives within a hundred mile radius of the City of Vancouver. The only other parts of the Province with even sizeable population are the Okanagan and Kootenay Valleys, with a more scattered population living along the Northern line of the Canadian National Railway. How does this affect the railway economy of British Columbia?

(Page 22214 follows)

THE CHAIRMAN: Pardon me, does this 100 mile area include Victoria?

MR. BRAZIER: Yes, it would. It is 80 miles by boat from Vancouver to Victoria, so it would take in the greater part of Vancouver Island and all the Fraser Valley, what is known as the lower mainland.

Next I wish to draw the attention of the Commission to the physical characteristics of transportation facilities in British Columbia. I think you can call British Columbia a main line province. Both railways have two principle lines of track in the Province -- the C.P.R. one through the rich mining area of Southern British Columbia and the second through the Kicking Horse Pass down the Thompson and Fraser Rivers to Vancouver. The only substantial branch line from the point of view of traffic is the one connecting the Okanagan Valley. There is, however, one other branch line with any mileage which is that passing down the Windermere and Columbia Valleys. Let us also remember that there is little likelihood of further lines being required in this area, because all the area suitable for habitation is already served by existing lines.

The C.N.R. likewise have one line running from Jasper through to Prince Rupert, and another from Jasper to Vancouver. The possibilities of expansion on the northern route of the C.N.R. are greater than anywhere else in the Province, but to date such expansion has not been as great as was expected at one time. Development of water power resources, in which British Columbia ranks second only to Quebec, may in

the foreseeable future bring new industries to this part of the Province. The Commission will appreciate this vast, as yet untapped area of the Province if it bears in mind that the City of Prince George is approximately the geographical centre of the Province. Again the only substantial branch line of the C.N.R. is into the Okanagan Valley.

Consequently, after eliminating the traffic in the Kootenay which is exclusively C.P.R. traffic and the traffic of the Okanagan which both railways share, and the traffic in timber along the Prince Rupert line, the railways travel through a large section of the Province which provides little in the way of traffic, in order to reach the important markets of the lower mainland. The railways on Vancouver Island are short and of lesser importance to the railway systems which operate them. Again, further expansion of the lines of rail in these areas are unlikely. You can immediately see that the railway operations in British Columbia are strikingly different from those in the Prairie Provinces or in Ontario. There is no need for a maze of branch lines of low-traffic density to feed the mainline system.

I think, my lord, that is very obvious if one looks at the map filed as Exhibit 215, which is really part of the C.N.R. Brief, and the picture there is somewhat the same as it is for the C.P.R. In all the other provinces there is a great maze of branch lines going in every direction, while in British Columbia you just have the two principal lines of rail in each case.

THE CHAIRMAN: Is that on account of the conformation of the mountains and so on?

MR. BRAZIER: The topography, I think, yes, principally that.

THE CHAIRMAN: What do you suggest then?

MR. BRAZIER: I am here, trying to point up to the Commission how British Columbia fits into the Canadian economy so far as railway operation is concerned.

The development of roads in the Southern part of the Province has paralleled the rail system of necessity because of the need to follow water course and mountain passes. Therefore, in British Columbia to a much greater degree than elsewhere in Canada, trucking complements the railways rather than supplements them. Only in the more remote sections of the Province does hauling long distances by truck add to the transportation facilities of the Province.

Before leaving the question of land transportation of the Province, mention must be made of the Provincially-owned Pacific Great Eastern Railway, which serves an important part of the interior of British Columbia. The Provincial Government was forced to take this line over after its original failure, and is at the present time expending the necessary money to connect it with the C.N.R. at Prince George, and to provide a means of access to the Port of Vancouver. This development will, I believe, be of benefit to the C.N.R. Upon the completion of these connecting links, the only possible major extension of railway service in British Columbia is the building

of a development line to the Peace River. This, it is submitted, is a responsibility of the Dominion Government, and should be placed high on the list of new lines to be constructed. It will serve a community which has already established itself ^{the} without/benefit of rail transportation, and will pass through an area of great potentialities.

THE CHAIRMAN: Is that the same area that was brought to our attention by Mr. Murray?

MR. BRAZIER: Mr. Murray, yes, that is the same area. I was just going to mention there, I say in that regard that I refer this Commission to the excellent Brief presented by the Peace River Board of Trade and the vivid pictorial presentation of "Beyond the Peace." That was the Brief which Mr. Murray presented.

British Columbia also has the advantages and disadvantages of water transportation along its lengthy sea coast. The main advantage is that water provides a ready and relatively cheap access to the markets of the world for the natural products of the Province, and permits competition for the railways on hauls of heavy material between the East and West Coast, resulting the so-called transcontinental rates, which I will discuss further later in my argument.

However, settlements along the Coast line are scattered and can only be reached by water. At certain times of the year the traffic is not sufficient to support the operation of the shipping lines operating on the coast and it has become necessary for the Dominion Government to subsidize their operations.

SECTION 1

The first part of the report deals with the general situation of the country. It is a very interesting study of the political and social conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The second part of the report deals with the economic situation. It is a very interesting study of the economic conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The third part of the report deals with the social situation. It is a very interesting study of the social conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

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The fifth part of the report deals with the cultural situation. It is a very interesting study of the cultural conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The sixth part of the report deals with the military situation. It is a very interesting study of the military conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The seventh part of the report deals with the foreign relations situation. It is a very interesting study of the foreign relations conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The eighth part of the report deals with the internal security situation. It is a very interesting study of the internal security conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The ninth part of the report deals with the education situation. It is a very interesting study of the education conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

The tenth part of the report deals with the health situation. It is a very interesting study of the health conditions. The author has done a great deal of research and has gathered a wealth of material. The report is well written and is a valuable contribution to the study of the country. It is a must-read for anyone interested in the subject.

Such then is the outline of the transportation problem as it affects British Columbia from a physical point of view. Undoubtedly the existing transportation facilities have played a large part in the development of our Province, but at the same time, they have been more than repaid for such services and we trust that it will never be even suggested again that British Columbia should pay additional charges for national transportation facilities because of its mountainous terrain.

One very important facility which British Columbia provides for the Canadian economy is the great port of Vancouver. Open the year round and permitting all of Western Canada to send its products to the markets of the world, it is certainly not too much to expect that when the countries of the Eastern world again have a measure of stability to their economies and are again freely trading with the rest of the world that Vancouver will become one of the great ports of the world and that it will, without doubt, become by a wide margin the leading port for Canadian commerce. It is essential that the Dominion Government give every possible assistance to the Port of Vancouver and provide for the co-ordination of all land and ocean traffic at that point.

THE CHAIRMAN: Just a moment, you were talking a while ago about the co-ordination question, because I was having in mind, you see, the matter we are inquiring into, that some regions of Canada suffer by reason of economic, geographic and other disadvantages which affect them adversely in respect of transportation difficulties. I thought perhaps you had something of that sort in mind

there.

MR. BRAZIER: No, I hadn't.

THE CHAIRMAN: But you were travelling beyond that. That is to say, you told us that the railways, by the lower freight rates they put into effect, had not only met certain competition by sea but they had eliminated it.

MR. BRAZIER: Probably I should not be quite that definite. I suppose there is still some coming into Vancouver.

THE CHAIRMAN: But the point is, has that injured you in any way? You are not asking for these rates to be increased.

MR. BRAZIER: I am not suggesting that. I am merely attempting here to give the Commission a brief picture of how transportation affects the economy of British Columbia.

THE CHAIRMAN: You see, we are dealing with transportation.

MR. BRAZIER: Yes, that is a problem which, I think, arose out of transportation. Next, Mr. Chairman, I would like to say something about a matter which we have placed before the Commission, namely the cost of service principle.

THE CHAIRMAN: Yes, we have heard that at great length in evidence, haven't we?

MR. BRAZIER: Yes.

THE CHAIRMAN: But you are still for it, are you?

MR. BRAZIER: Still for it.

COST OF SERVICE PRINCIPLE

In keeping with the words of the Attorney-General, the Province of British Columbia has made certain representations before your Commission which were thought to be of importance when consideration was being given to the establishment of a national transportation policy. These representations were made in the hope that if adopted they would give to the two transcontinental railways the promise of solving their principal difficulty, namely, the obtaining of sufficient over-all revenue to permit them to provide efficient transportation to all parts of Canada.

It is interesting to note that when the last Royal Commission on Transportation sat under the Chairmanship of Sir Lyman Duff, the railways were suffering from a very drastic reduction in traffic and revenue. Today, while your Commission is making its investigation, traffic is at a high level and the railways are enjoying the highest gross revenues in their history. Most railway officials seem to be under the impression that their present difficulties are due entirely to their inability to obtain higher freight rates, and the chief blame for this is of course placed on the opposition of the seven provinces to their several applications.

Of all the witnesses appearing for the railways only one, in my opinion, gave any inkling that the present-day problem of the railways goes much deeper than the question of higher freight rates. The day of railway supremacy in the field of transportation has, I suggest, passed and while

The first part of the document is a list of names and dates, which appears to be a record of some kind. The names are written in a cursive script, and the dates are in a more formal, printed style. The list is organized into columns, with names in the first column and dates in the second column.

The second part of the document is a series of paragraphs of text, written in the same cursive script as the names. The text is somewhat faded and difficult to read, but it appears to be a narrative or a report of some kind. The paragraphs are separated by small gaps, and the text is written in a consistent style throughout.

The third part of the document is a list of names and dates, similar to the first part. This list is also organized into columns, with names in the first column and dates in the second column. The names are written in the same cursive script, and the dates are in the same printed style.

The fourth part of the document is another series of paragraphs of text, written in the same cursive script. The text is also somewhat faded and difficult to read, but it appears to be a continuation of the narrative or report from the second part. The paragraphs are separated by small gaps, and the text is written in a consistent style throughout.

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The sixth part of the document is a final series of paragraphs of text, written in the same cursive script. The text is also somewhat faded and difficult to read, but it appears to be a conclusion or a final statement of some kind. The paragraphs are separated by small gaps, and the text is written in a consistent style throughout.

railways must still remain the most important, and in fact an indispensable part of the transportation facilities of Canada, they must inevitably be faced with a constantly diminishing proportion of the total traffic. Higher rates on part of their traffic will not in itself solve this problem. I suggest that a cursory survey of the position of railways in the United States and Great Britain today, where greater rate increases have been granted than in Canada, will indicate that this is so.

The principal submission we have made to your Commission is that the rates being charged by the railroads for the service rendered by them should be established more closely on a basis of cost and that these costs be determined on a system-wide basis. In the first place we realize that we were not in a position, due to lack of available information, to make any complete study as to how such a plan of rate making would affect the railways of Canada. We have advanced the suggestion to the Commission in the hope that the Commission's experts will be able to give the additional study, which we could not give, and determine whether or not the railways should at this time change their approach to the question of rate-making.

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My lord, I understand it is the desire of the Commission that Mr. Lewis be heard at this time.

THE CHAIRMAN: You are going to stand aside?

MR. BRAZIER: I will stand aside till Thursday morning. The West will give way to the East.

THE CHAIRMAN: Then we are hearing Newfoundland next, all right.

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ARGUMENT SUBMITTED ON BEHALF OF THE
PROVINCE OF NEWFOUNDLAND

MR. P. J. LEWIS, K.C.

MR. LEWIS: May it please your lordship, gentlemen. I appreciate very much indeed the kindness of Mr. Brazier and the Commission in giving me this opportunity of being heard at this time. Mr. Chairman and gentlemen, the following is the submission of the Province of Newfoundland relative to its various transportation difficulties.

Privy Council Order 6033 constituting this Royal Commission empowers the Commission amongst other things to

"(a) Review and report upon the effect, if any, of economic, geographic, or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation policy may best serve the general economic well-being of all Canada."

It is to this particular phase of the Terms of Reference that Newfoundland's interest is directed. Hers is not a problem of regulation of prevailing conditions so much as one related to the provision of transportation facilities in themselves. Her position in this respect differs greatly from the other provinces of Canada where adequate transportation facilities exist.

Because of Newfoundland's insularity, particularly her past political insularity, it was beyond the competence of her people to provide transportation facilities on a scale comparable to that obtaining on the Mainland. Now that she has become an integral part of the Canadian Federation the position vis-a-vis transportation has become materially altered. Heretofore our people had as their source of supply, the United States market and for the importation of their requirements they had available to them water carriage facilities from New York and other American outlets.

Today because of the changed conditions brought about by Confederation and exchange restrictions, the American market is closed to Newfoundland as a source of supply. Almost her entire importations must be acquired in the Canadian market and concomitant with that fact is the necessity for adequate transportation facilities to permit the delivery of these importations.

Railway facilities are limited to a narrow gauge road which meanders for a distance of 547 miles from Port aux Basques at the extreme south-western corner of the Island to St. John's, the capital on the eastern coast. The nearest point of railway contact on the mainland is at North Sydney, Cape Breton; a distance of 90 miles by sea from Port aux Basques. All movements by rail must move through North Sydney - Port aux Basques, thus entailing expensive handling charges, loading and re-loading at both ends. It is because of the insularity of the Province plus the effect of Confederation with Canada that transportation facilities heretofore adequate have become entirely inadequate and a vital factor in the economic position

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of Newfoundland's people.

The charges incidental to transportation via rail haul, heretofore unimportant to our people, have now become of first rate importance to us. It was thought that under the Terms of Union Newfoundland would be entitled, without question, to the same rail rate structure as obtained in the Maritime Provinces. This assumption has been questioned and the railway authorities have thought fit to impose upon traffic moving into, out of and within the Island differential freight rates to those obtaining in the Maritimes. The question involved in this is the subject matter of investigation by another tribunal, and consequently any reference herein will be of purely general application.

THE CHAIRMAN: You mean by the Board of Transport Commissioners?

MR. LEWIS: The Board of Transport Commissioners, my lord.

It is therefore to the broader features of transportation or rather lack of it, that this submission is being particularly directed.

A brief has already been submitted by the Province of Newfoundland to this Commission. That brief was supported by evidence of witnesses who were heard and examined while the Commission sat at St. John's. (The brief and the evidence are to be found in Vol. 32 and Vol. 33 of the Record.) The Brief itself contained in all fifteen recommendations. Since the brief was submitted certain matters therein recommended have been adjusted. This applies particularly

to Recommendation No. 12 relative to air transportation intra-provincially.

Recommendation No. 11 is a matter purely within the province of the Provincial Legislature and consequently for the purpose of this submission may be ignored.

The remaining twelve recommendations still stand and it is towards their endorsement that this submission is being made.

ISLAND-WISE TRANSPORTATION:-

The first recommendation relates to road communication Island-wise and it is suggested that this matter be adverted to from the standpoint of the strategic advantage which Newfoundland offers to the mainland. The brief submitted on behalf of the Province sets forth at pp. 23 and 24 (Vol. 32 pp. 6212 - 13 of the Record) the number of miles of roadway constructed within the Island. The map of Newfoundland which formed an Exhibit at the sittings detailed in outline the location of these roads and their various mileages, as well as particulars of the standard of construction and dimensions.

No trans-insular road exists, but the matter is, so we are instructed, under consideration as part of the Trans-Canada Highway. It is not fitting at this time or place to comment upon the negotiations presently being carried on in relation to this matter, but it is only right to say that the lack of road communication within Newfoundland is a matter of vital importance to the mainland from a strategic standpoint. Newfoundland situated as it is on the east coast line of the Dominion of Canada and astride the mouth of the St. Lawrence River

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is of great strategic importance to the mainland of North America as a bastion of defence against attack. But this strategic advantage which the Island offers to the mainland can be availed of to the fullest extent, only if means of communication are available. This is a matter that concerns not alone the Province of Newfoundland, but the peoples on the mainland as well. It is to them particularly that the island offers a rampart of defence. It is the natural first defence line for the entire American continent and any plan of defending North America would be woefully wanting were it not to exploit fully the strategic importance of Newfoundland in this respect.

The natural location of the island, controlling the entrance to the River St. Lawrence at the Straits of Belle Isle and the Cabot Strait is the best insurance that the people of this country can obtain against a surprise attack. An enemy who gains a foothold on Newfoundland controls the eastern seaboard of America. This position is obvious. In order therefore that this geographic factor be availed of, road communication should exist and this is a matter of international and not provincial importance.

Newfoundland is to the East as Alaska is to the West. There, road communication was considered to be essential and was established. The same cogent reasons exist in relation to Newfoundland and action should be taken accordingly.

When the legions of Rome conquered Europe they followed up their conquest with the immediate construction of roads. They did this because they knew

that without roads they could not hold what they had gained. Canada has gained Newfoundland, without conquest, but in order to protect herself, she must in her own defence provide the facilities necessary to ensure that others bent upon conquest may not be allowed to gain a foothold on the threshold of the North American Continent. Lack of vision on the part of those charged with the responsibility of defence or of impecuniosity on the part of those required to pay the bill could have disastrous consequences.

It is therefore suggested that this lack of road communication within Newfoundland with its consequent weakening effect upon the strategic position of the Island to the mainland be brought to the attention of the appropriate authorities for such action as the exigencies of the situation demands.

THE CHAIRMAN: What is going on about Newfoundland in connection with the trans-continental highway?

MR. LEWIS: Negotiations are being carried on at the moment, my lord, but, as I understand it, if and when the matter is concluded the road will not bisect the Island; the road will parallel the railway line, which will still leave open this question of intra-Island road communication -- I mean from a strategic point of view, not from the angle of communication otherwise.

THE CHAIRMAN: Of course you know the highway construction within a Province is usually - -

MR. LEWIS: I realize that my lord.

THE CHAIRMAN: But you think that here a departure should be made?

MR. LEWIS: Yes, I am stressing - -

THE CHAIRMAN: In the interests of continental defence?

MR. LEWIS: Yes, my lord, purely from that angle. I submit with all the force that I can that Newfoundland without proper means of communication is a menace to the defence of the North American Continent, and that is why I think it is important that the strategic angle should be stressed to the ultimate.

(Page 22232 follows)

That takes us to Gander Airport, my lord:
Gander Airport.

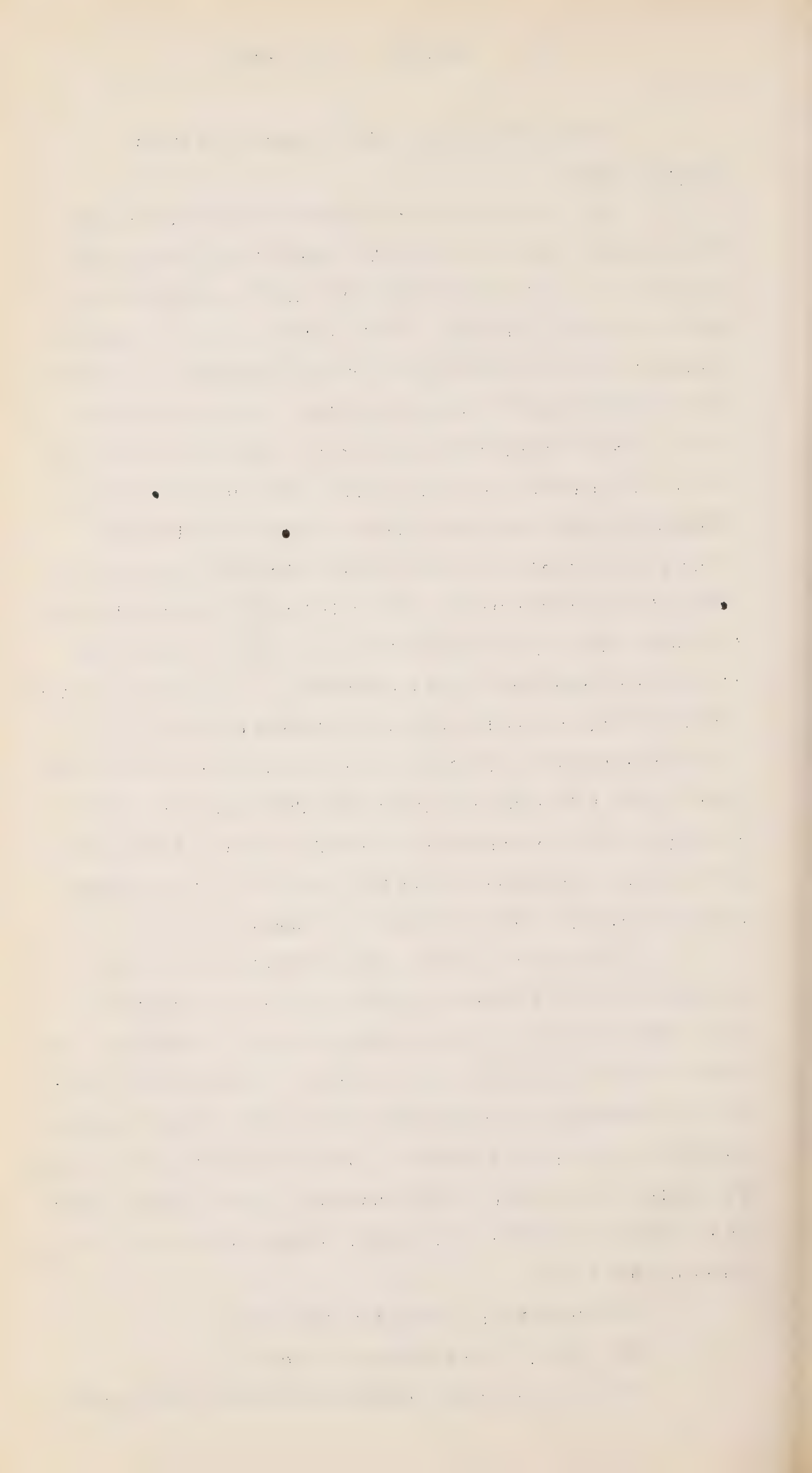
And so we come to the second recommendation in the Provincial Brief, namely, the necessity for the construction of a military route from Gander Airport to the most accessible point of contact on the seacoast. Gander Airport is the largest but one of the Airports in the world. It is situated in the interior of the Island of Newfoundland. It was established prior to the opening of the last war for the purpose of maintaining aerial communication between the North American and the European Continents along the great circle route and the shortest water route across the Atlantic Ocean. It is today the crossroads for trans-Atlantic flying and it is an essential link in the line of communication around the world. It is only $4\frac{1}{2}$ flying hours from the nearest land on the European side. It is 797 nautical miles from Greenland; 1397 nautical miles from Iceland and 1716 nautical miles from Shannon, Eire. It is the key to the air supremacy of North America in the event of war and it was used during the late war as the hopping off place for the Trans-Atlantic air supply.

This giant airport; this potential key to the unlocking of the defences of North America is isolated in the wilderness, in so far as communication is concerned. No roads radiate from it by which contact can be made by land; the sole means of communication is the narrow gauge railway presently spanning the Island. During the winter season when the northeastern coast of Newfoundland is ice-blocked, there is no contact with the sea, except through St. John's a distance of 200 miles.

THE CHAIRMAN: 200 miles from where?

MR LEWIS: From Gander, my lord.

In a speech made recently by General MacNaughton,



he indicated that Canada would henceforth assume responsibility for the North Atlantic defence of the Western Hemisphere. Gander Airport in the view of the Province of Newfoundland is the most important link in that potential line of defence. As it stands today, isolated and without communication, except by a narrow gauge railway, it constitutes a menace of incomprehensible magnitude to the peace and security of the North American Continent.

Not many years have passed since the world was startled by an overnight attack upon Pearl Harbour. Prior to that event, the great United States of America felt secure in the fact that its outpost in the Pacific was an impregnable line of defence. Overnight this position had changed and America found herself with an enemy on her doorstep, threatening her very existence. Gander Airport has all the potentialities of another Pearl Harbour -- an overnight attack by air is not incomprehensible and a sudden attack upon an airport situate as Gander is, on the very doorstep of the North American Continent could bring disastrous results to the great cities of Montreal and New York. When once taken it could be used as a base from which to strike an overwhelming blow at the vital centres of the North American mainland.

It follows that a military route from Gander to the sea is most essential. In fact, it is vital and construction of such a line of communication should take priority in any scheme that visualizes the effective defence of the North American coastline. This route should be constructed from the Airport to the nearest point on the southern coast of Newfoundland where harbour facilities can be found. Such a port exists where there is ample space for concentration of shipping and the establishment of a supply base. It is little more than 100 miles from the Airport as

the crow flies. It is ice-free all the year 'round and it is only 280 miles from Halifax.

THE CHAIRMAN: What is the name of it?

MR LEWIS: Bay D'Espoir, my lord.

A clear water lane exists from Halifax to this harbour - open to shipping throughout the year. This water lane extends out over the St. Pierre Bank and it is not impeded by either the Gulf ice which comes down the Gulf of St. Lawrence or the northern ice which passes down the eastern coast of Newfoundland. Fast shipping could make this port from Halifax, in little more than 24 hours. If a road existed or a railway, supplies, materials, men and equipment could be stationed there and made available to the Airport overnight in the event of emergency.

The importance of Gander from a military angle cannot be overstressed and its present isolation is a menace that cannot be over emphasized. It is therefore urged that the establishment of road and/or rail communication, if thought fit, between Gander and the Sea is a vital factor which should be brought to the attention of the authorities, both Canadian and American promptly, and with the greatest force.

This Commission provides the means whereby this feature of Gander can be brought to the attention of those charged with the responsibility for setting up the most effective defence of the North American Continent. A recommendation from this Board to His Excellency the Governor-General-in-Council of necessity must carry great weight and in addition it would have the advantage of arousing public opinion on this most important matter. The people of Canada and the United States of America are unaware of the grave danger inherent in Gander Airport today. However, once having been informed of the threat which its isolation

constitutes, the remedy will follow in short order. The cure of this defect will mean greater security in that men, materials and equipment can be moved with despatch from the mainland to this vital spot. A gateway would thus be provided offering a rapid means of communication to the one outpost on the North American Continent that can mean security or disaster in the event of an undeclared war.

COMMISSIONER ANGUS: Are you suggesting that the military authorities are unaware of this?

MR LEWIS: Well, the only answer I can make, Dr. Angus, is that there is no evidence that they are, or if they are conscious of it they are not doing anything about it.

The establishment of rapid means of communication to this vital point of defence is not the responsibility of the Province of Newfoundland. The strategic location of one of the world's greatest airports, in the centre of the Island is merely a geographic accident, but the importance of it to the Mainland and its people is a matter of grave concern. It is therefore respectfully suggested that this Commission make a recommendation that this feature of Gander Airport be investigated with a view to provision being made for the removal of the great disadvantage from which it suffers up to the present time.

THE CHAIRMAN: Has the Dominion Government established any military posts of any kind in Newfoundland?

MR LEWIS: Not at Gander, my lord. The only military posts we have on the Island are at Argentia, Stevensville, Fort Pepper and St. John's. These are American military posts. And I may say the Americans have constructed a military road from their Argentia post into St. John's.

THE CHAIRMAN: How long is it?

MR LEWIS: About 84 miles.

Inadequacy of North Sydney and/or Port aux Basques
to handle available traffic.

On page 21 of the Provincial Brief (Vol. 32 p. 6207 of the Record) there is set forth a Table showing the total tonnage of cargo to be moved into Newfoundland. These figures are based on importations made in 1948. The total importations in that year aggregated 1,221,000 tons. Deducting bulk cargoes amounting to 943,000 tons, and shipments from Europe totalling 17,500 tons, a balance of 268,482 tons of general cargo was moved into the Province. Heretofore the greater bulk of this tonnage came into the Island from the United States of America, but because of present exchange restrictions and Canadian tariffs operating against American purchases, this cargo now originates in Canadian centres and has to be moved into Newfoundland from that area. Under the Terms of Union, specifically, section 32 (2) Newfoundland is constituted part of the Maritime region for railway rate-making purposes and through-traffic moved via North Sydney - Port aux Basques is designated an all-rail movement.

The Province of Newfoundland contends that the rail rate structure obtaining in the Maritime region should be made applicable to Newfoundland, and that the implication of Section 32 (2) in constituting Newfoundland part of the Maritime region for railway rate regulation, means this. The railway, on the other hand, contends that the Maritime rate on through-traffic applies only as far as Port aux Basques, but from that point onwards, they claim the right to charge additional rates over the Maritime level, because of dissimilarity in railroading conditions.

THE CHAIRMAN: Do you set out just what you mean by this?

MR LEWIS: I beg your pardon, my lord?

THE CHAIRMAN: Are we to be told later on just what you mean by applying the rate structure?

MR LEWIS: The rail rate structure presently in effect in the Maritimes.

THE CHAIRMAN: Now existing in the other Maritime Provinces, to Newfoundland?

MR LEWIS: No, my lord; the rail rate structure presently existing from Upper Canada into the Maritime Provinces; that is the structure that we thought of---

THE CHAIRMAN: It says here:

"The Province of Newfoundland contends that the rail rate structure obtaining in the Maritime region"---

MR LEWIS: That really should be, I suppose, Maritime Provinces. It really means Maritime Provinces.

THE CHAIRMAN: When you say Maritime region, what does that include? Is there any such thing in the Railway Act, for instance?

MR LEWIS: Not in the Railway Act, but it is mentioned in the Terms of Union, my lord.

THE CHAIRMAN: Is it defined to mean any---

MR LEWIS: There is no definition given.

THE CHAIRMAN: You do not know whether it is confined to the Maritime Provinces or takes in part of Quebec, for instance?

MR LEWIS: It does not take in Quebec. It takes in the Maritime Provinces only, and Newfoundland is included in the old what was known---

THE CHAIRMAN: What do you mean then, by "the rail rate structure obtaining in the Maritime region"? You must have reference to some structure that is in the other Maritime Provinces but has not yet been extended to Newfoundland.

MR LEWIS: That is our---

THE CHAIRMAN: The Maritime Freight Rates Act, how about that?

MR LEWIS: Well, the Maritime Freight Rates Act, no. There is no dispute about that. The Maritime Freight Rates Act is being applied. It is being applied within the Island and also to outward movements. Our principal problem has to do with traffic moving into the Island from Upper Canadian centres.

THE CHAIRMAN: You mean from Quebec and Ontario?

MR LEWIS: Yes; and Montreal and further west.

THE CHAIRMAN: Traffic moving from Nova Scotia and New Brunswick?

MR LEWIS: Through Nova Scotia into Newfoundland -- what we call through traffic, my lord.

THE CHAIRMAN: What is your problem, then?

MR LEWIS: Well, our problem is that in what I prefer to call the Maritime region or the Maritime Provinces they have a particular form of rail rate regulation. Their rail rates on through traffic are predicated upon a basic rate to Saint John, New Brunswick, and then upon an arbitrary system from Saint John east. Now, the arbitrary system in so far as we are concerned applies to Sydney.

THE CHAIRMAN: Applies what?

MR LEWIS: To North Sydney or Sydney; but from Sydney into Newfoundland there is a great discrepancy, or discrimination, as we prefer to say, between the arbitraries that are charged over Newfoundland and those that are presently in effect down to Sydney. To give you an example, the arbitrary on through traffic to Sydney is 6¢ per 100 pounds, and the distance from Truro to Sydney is something like 240 miles. For the next 100 miles across the Gulf of St. Lawrence -- it is between 90 and 100 miles --

the arbitrary is 65¢ per 100 pounds. Then the Island is divided into two zones. For the first zone the arbitrary is 47¢, and the next one is 26¢. Our main trouble, which we hope to have resolved at some time by the Board of Transport Commissioners, has to do with that arbitrary that is charged for movements across the Gulf of St. Lawrence. The railways admit that the through rate applies up to Port aux Basques.

THE CHAIRMAN: The through rate what?

MR LEWIS: Applies up to Port aux Basques, and ^{on} from Port aux Basques/they say they have the right to charge 10¢ per 100 pounds as compensation for the difference in the cars used on the Newfoundland Railway, which of course is a narrow-gauge railway. Our particular problem has to do with the movement across the Gulf of St. Lawrence. We contend that as that is an all-rail movement the same system of arbitraries proportionately as obtains in the Maritimes should apply on that Newfoundland traffic.

THE CHAIRMAN: That problem is now before the Board of Transport Commissioners?

MR LEWIS: Before the Board of Transport Commissioners, yes, my lord. We are not raising it with this Commission at all. I am just referring to it generally as we go along here, but that is the fact, my lord.

For the purpose of this submission under this particular head, it makes little difference which contention is correct. If the Province is right, then the through-rate obtaining in the Maritimes applies throughout the railway system of Newfoundland with certain mileage differentials. If on the other hand, the railways are right, then the through-rate applies up to Port Aux Basques. In either event, the volume of traffic to be routed via North Sydney -

Port aux Basques on this all-rail basis, must increase tremendously as time goes on; and it is admitted that the facilities at both North Sydney and Port aux Basques are entirely inadequate to meet increased traffic conditions. The total volume moved through North Sydney - Port aux Basques in 1948 was 65,000 tons out of a total of 264,482 of general cargo, and then the facilities were over-taxed.

THE CHAIRMAN: Then if it should turn out that the railway's contention is right---

MR LEWIS: I beg your pardon, sir?

THE CHAIRMAN: If it should turn out that the contention of the railway is the right one, you lose on that issue?

MR LEWIS: Definitely, my lord.

THE CHAIRMAN: Then do you want us to do anything in that case?

MR LEWIS: No, my lord. I am merely leading up to the inadequacy of the outlets and the inlets.

THE CHAIRMAN: You have taken the whole question---

MR LEWIS: The whole question of freight rates to another court, sir.

Time and again an embargo has been declared over Sydney with the result that traffic routed all-rail had to be diverted through Halifax. I am instructed that during the past winter and even now a tremendous backlog exists in relation to freight movements through Sydney.

The following is an extract from a report made by the secretary of the Associated Newfoundland Industries Limited relative to the freight jam between Truro and North Sydney during the past winter shipping season:

"The blame for the inexcusable blocking of hundreds (at least two) of freight cars for weeks from Truro

down to North Sydney we placed squarely at Moncton's door. During the late summer and early fall, freight was blocked, taxing the capacity of the Truro - North Sydney - Port aux Basques link, and surface freight was steadily routed to Halifax and carried to St. John's, by boat Not only Cape Breton but Halifax became blocked with no shipping to take it away then, and shippers began routing C.P.R. through St. John, which further blocked the Furness boats before they got to Halifax, and the situation became desperate. The whole island was short of merchandise and business in the inland towns, dependent on the railway, was entirely at a standstill. The railway had to try to move essential and perishable goods only."

This situation is not uncommon and it will continue to the serious detriment of the trade until something is done. If the Maritime structure is made applicable to movements over the railway or via the all-rail route, the increase in the volume of traffic will be four times what it was in 1948. This will create an impossible position. Firstly, North Sydney is ice-bound for weeks on end and when this occurs, passengers and freight are routed through Louisburg, which is an ice-free port. Incidentally, Louisburg is entirely without facilities for the handling of passengers and/or freight and it has been the practice in the past to charge additional rates for movements via Louisburg. This cannot be permitted under the present system, if traffic is routed all-rail via North Sydney - Port aux Basques to Newfoundland. Shippers must receive the same rail rate privileges whether their goods are routed via North Sydney or Louisburg. However, this will not cure the difficulty which must arise.

Neither North Sydney nor Louisburg can handle the additional volume of traffic that must flow from Canada to Newfoundland, if the Terms of Union as interpreted by the Province are properly implemented. The same observations apply to Port aux Basques. Under present conditions the facilities at that port are taxed to the limit. What with paper shipments during the winter months and general traffic, the facilities at Port aux Basques are not alone insufficient to handle the traffic offering but because of the limited harbour facilities it will be impossible to meet the situation which must arise. It follows that alternative outlets must be provided and if the railway is to use alternative outlets to handle the traffic, the Newfoundland receiver must not be penalized.

At the moment Halifax and Saint John are being used as alternatives and in this connection agreements have been made with various water carriers to take delivery of shipments at both these ports under through Bills of Lading for delivery at Newfoundland ports. This has been possible only because the all-rail rate charged by the Canadian National Railways over its Newfoundland system has been sufficiently high over the Maritime structure to allow water carriers to lift at competitive rates. When once Newfoundland's rate structure is cut back to the Maritime level, such competition will be impossible and the Railway will of necessity, in its capacity as common carrier be obliged to accept and deliver the volume of traffic which is now being lifted by steamboats.

The alternative to the reduction of rates to the Maritime level will mean the construction across Newfoundland of a standard gauge railway system, together with a railway car ferry on the Gulf. The Province cannot be expected to suffer indefinitely under the burden of unequal freight

rates, which in turn have the effect of maintaining an abnormally high cost of living and an unjustifiable burden upon local manufacturers and distributors.

The maintaining of the present system constitutes an abnormality in the economic structure of Canada. It means that the people in the newest Province are being penalized because of federation, transportation-wise. This penalty arises from the fact that they are restricted from purchasing in the markets of the United States of America where all down through history our people were privileged to deal. Now, because of federation, they are obliged to purchase in Canadian markets and complementary to this is their right to trade on the Canadian mainland. So long as they are suffering from a disparity in transportation costs they are required to pay higher for the goods that they receive, and also to pay more for the transportation of the goods which they wish to sell, both within and without the Province. In other words, they are being subjected to a double penalty; which can have but one result on the economy of the Province -- a depressed standard of living; beyond that of any other part of Canada.

To sum up the position in relation to this particular head: it is urgently prayed by the Province that this Commission constituted to point out the defects from which any part of Canada is suffering from geographic or economic disadvantages, should recommend to His Excellency, the Governor-General-in-Council, that the position of Newfoundland vis-a-vis transportation should be inquired into immediately and that the necessary steps be taken in this connection towards the implementing of the spirit of the Terms of Union, so that the people of the Province may not continue to be subject to an economic disparity which was never visualized and should not be per-

mitted to exist.

THE CHAIRMAN: Mr. Lewis, you say there, you ask that the position of Newfoundland regarding transportation should be inquired into immediately; that is what we are doing; we are inquiring into it.

MR LEWIS: Very well, then, my lord, if you are prepared to make a recommendation in relation to it.

THE CHAIRMAN: I beg your pardon?

MR LEWIS: I say if the Commission is prepared to make a recommendation in relation to it, very well, but---

THE CHAIRMAN: Well, as long as you can tell us just what you want us to recommend, we can consider it.

MR LEWIS: Well, I have certain recommendations, my lord. I did not want to burden this Commission with that.

Further, having regard to what has been said relative to the disparity in the freight rate structure, and the right of the people of Newfoundland to equal treatment with that being received by their Maritime neighbours, it follows that if the dissimilarity in transportation facilities precludes the granting of equal treatment, then the only course left is to modernize it.

THE CHAIRMAN: Modernize what?

MR LEWIS: The railway system, my lord.

This would mean the construction across Newfoundland of a standard gauge railway system, together with the necessary ferrying facilities on the Gulf of St. Lawrence. This in turn would eliminate the necessity for the handling of cargo enroute; a factor which is of tremendous importance under present conditions and reflects itself in the very high arbitrary rate that is being charged by the railway for movements across the Gulf of St. Lawrence. Such an undertaking would involve a very substantial capital outlay, and

it is not suggested by the Province that this should be done. However, the C. N. railways predicates its right to charge additional freight rates upon the narrow gauge system and the movement across the Gulf. As this practice is a violation of the spirit of the Terms of Union, either one of two things will have to be done:

- (1) The difference involved in handling charges will have to be absorbed by the railways, or
- (2) a uniform system of transportation will have to be provided.

A third solution suggests itself, and it is this - that Newfoundland services of the Canadian National Railways system, until such time as it is modernized, be operated on a basis different from that of the mainland portion of that system. That is, that the Newfoundland services be operated by Canadian National Railways Company merely as operators, for and on behalf of the Federal Government, with the right in the railways to require from time to time reimbursement from the Canadian treasury for deficits shown on operating account. It appears to us that the Newfoundland branch of the railway system is in the same category as the 5700 miles of railway referred to in the brief of the Canadian National Railways, and which is presently operated on deficit financing. If the Newfoundland system were

operated by Canadian National Railways as a service, the deficit shown on the Newfoundland operations would not be reflected in the Balance Sheet of the Canadian National Railways Company; a point about which the railway executives are somewhat sensitive ... In so far as Newfoundland is concerned, it would make little difference how the loss on operating account were made good, but what is important to her is that as part of Canada she should be treated as part and not as an isolated unit. She should be given the

same privileges as are enjoyed by those residing in the same railway region, which is what her representatives at the Confederation Conferences understood that she would receive. Unless this is done inequity will result to her people in perpetuity.

THE CHAIRMAN: On page 15, Mr. Lewis, you talk about the practice which exists, and you say:

"As this practice is a violation of the spirit of the Terms of Union . . ."

Has that question been determined, or is it now before the Board in a way, or what is the situation? I notice that you use the word "spirit".

MR LEWIS: I use the word "spirit" -- not the words.

THE CHAIRMAN: Have the terms themselves been interpreted?

MR LEWIS: Only to a limited extent, my lord.

THE CHAIRMAN: By the Board?

MR LEWIS: By the Board. The Board of Transport Commissioners has held that there is nothing in the terms of union that precludes the railway from charging, if I may put it this way, discriminatory rates for dissimilar conditions as they are found in Newfoundland. They did not adjudicate upon the quantum; they merely said that the principle still obtains; there is nothing in the Terms of Union that precludes the railways from applying that rule.

THE CHAIRMAN: This language, which includes Newfoundland in the Maritime region---

MR LEWIS: Yes, my lord, for railway rate-making purposes.

THE CHAIRMAN: That does not give you the favourable advantage you thought you were getting.

MR LEWIS: That is so, my lord. That is why I use

the word "spirit" here.

Should it be found impracticable to standardize the system, then immediate attention should be directed towards and realignment of the railway profile with a view to reducing grades and eliminating curves. If this were done, it would permit the movement of heavier trains, reduction in time tables and the amelioration to some extent of prevailing conditions.

Inadequacy of Rolling Stock.

There is set out on pages 18 and 19 of the Provincial Brief a list of rolling stock and equipment of the Newfoundland railway as at April 1, 1949. It is a notorious fact that the railway system in Newfoundland is woefully short of adequate equipment. During the past winter serious delays and difficulties were encountered, particularly in the movement of newsprint from Grand Falls to St. John's and from Corner Brook to Port aux Basques. Were it not for the fact that one of the paper companies was in a position to make available sixty of its box cars, heavy demurrage charges would have been incurred by the shipping companies, and as it was, great inconvenience was suffered due to the lack of carrying equipment. This shortage in rolling stock reflected itself in the movement of local products within the Island. It is conservatively estimated that the railway requires an additional 200 box cars and at least 10 additional locomotives.

The all-rail route via Sydney and Port aux Basques raises a further difficulty in regard to the movement of fruits and fruit products, fresh meats and allied commodities. As at April 1, 1949, the railway was possessed of only thirty-eight refrigeration cars. This equipment always inadequate is now hopelessly so because of the

changed conditions. It is estimated that not less than fifty additional cars of this type would be the minimum requirement. We are instructed that requisitions have been made to the appropriate authorities for the supplying of the equipment necessary to the railway to move its freight commitments adequately. It is urged that the situation is sufficiently serious to justify a recommendation from this Commission that the requisitions so made be implemented with the least possible delay. This recommendation applies with equal force to the steamships operated by the railway system and it is of particular application to the vessels operating in the Gulf of St. Lawrence which maintain a link of communication between North Sydney and Port aux Basques.

Coastal System and Subventions.

Pages 29 to 38 of the Provincial Brief (Vol. 32 pp. 6217-6237 of the Record) deal with the coastal system of transportation as operated by the Canadian National Railways Company around the coast of Newfoundland and Labrador. This branch of transportation is a vital means of communication to Newfoundland people, because of their insularity and the fact that 200,000 of them are residing in twelve hundred settlements on the coastal fringe, to which no other means of transportation is available. It is vital. For years, as the Brief shows, the Government of the Island has been conscious of this fact, and has provided within the scope of the finances available, a system of transportation, not adequate, but as practicable as possible.

THE CHAIRMAN: Mr. Lewis, you tell us here that 200,000 of your population are residing in this position of insularity and so on.

MR LEWIS: Yes, my lord.

THE CHAIRMAN: That is out of a total population of 350,000?

MR LEWIS: That is right, my lord, or 400,000, that is right -- twelve hundred settlements all around the coast.

THE CHAIRMAN: I did not know the figures, that the population was divided that way.

MR LEWIS: Yes -- very scattered.

It was maintained at the standard which it did attain, only because subsidies---

THE CHAIRMAN: Pardon me. I just want to make sure. You say that 200,000-odd, then, reside in twelve hundred settlements on the coastal fringe -- is that along the whole of the coast?

MR LEWIS: That is the whole of the coast of the Island, yes, sir, and including Labrador.

THE CHAIRMAN: Including Labrador?

MR LEWIS: Yes, my lord.

It was maintained at the standard which it did attain, only because subsidies for the carriage of mail were paid as nearly as possible proportionately to the service rendered, and certainly to as great an extent as the Island's Government could afford. Within recent years, because of financial circumstances, the subsidy was reduced from \$383,000 in 1930-1931, to \$65,000 in 1947-1948. In other words, the subsidy presently being paid is fifty cents per steaming mile, and having regard to the nature of the services performed, the number and type of the ships involved, there is no relationship between the services rendered and the subvention paid. The result is that according to the latest figures available the deficit on coastal operations was in the vicinity of \$300,000; a loss which would not have been made, had the subsidies paid in 1930-1931

been maintained.

THE CHAIRMAN: The subsidy you are talking about came from where?

MR LEWIS: The Newfoundland Government, my lord. That is prior to Confederation.

COMMISSIONER ANGUS: On whom did the deficit fall?

MR LEWIS: Upon the Government too; upon the railway really, but the railway was reimbursed by the Government.

THE CHAIRMAN: The subsidy was paid by the Government to the railway?

MR LEWIS: To the railway for the carriage of mails.

THE CHAIRMAN: To their own railway?

MR LEWIS: That is right. It was something inherited from the old system. Originally the coastal system was operated by private companies under contract with the Government, my lord, then the services were taken over by the Newfoundland Railway, and the Newfoundland Railway was treated as being in the same category as a private contractor.

THE CHAIRMAN: Then you say at the end of that paragraph that there was a loss of \$300,000, which would not have been made had the subsidies paid in 1930-1931 been maintained.

MR LEWIS: That is right, my lord. They reduced the subsidy---

THE CHAIRMAN: If the owner of the system was the Newfoundland Government, the loss would have been incurred by the Government in any event.

MR LEWIS: Quite true, my lord, except that in so far as the railway balance sheet was concerned, and the operation of the boats themselves, they would have shown no

loss qua boats, but as it was, because of the reduction of the subsidy---

THE CHAIRMAN: The point I suppose is, how did it affect the service, the actual service? Did it deteriorate under that?

MR LEWIS: Well, I would not say so. It was maintained. The loss was carried by the treasury, and that was that, but I am coming to why I am raising this question at the moment, my lord. I think there is a solution which offers itself.

(Page 22250 follows)

Apart altogether from the quantum of subsidies heretofore paid by the Newfoundland Government for the operation of coastal vessels, the attention of the Commission is respectfully directed---

THE CHAIRMAN: And all subsidies have ceased to be paid now?

MR. LEWIS: Oh, yes, my lord, since Confederation.

---towards a comparative statement appearing on page 32 of the Brief, regarding subsidies being paid for similar services by the Federal Government -- coastal services on the eastern coast of Canada, particularly the services operating between Prince Edward Island and Newfoundland ports and Prince Edward Island and Mainland ports, Quebec - Montreal and Gulf ports as well as ports on the north shore of the Gulf of St. Lawrence. It will be seen by reference to that Table, very substantial subsidies are paid by the Federal Government for coastal services in these areas, which, if applied on a comparative scale to the Newfoundland services would allow the steamships to operate at a profit. This in turn, would be reflected in the more efficient operation of the service itself.

It might be suggested that this is a matter that should be taken up directly as between the Railway Company, the operators of the service and the Federal Government. But, as the Province is vitally interested in the efficient operation of the coastal service, and in seeing that the Province receives the same treatment transportationwise, in relation to all means of transportation, it is felt that the attention of the Commission should be drawn to these facts in the hope that they may feel disposed to make recommendations for the application of these subsidies and subventions to Newfoundland, on the same basis as obtain in other sections of Canada.

COMMISSIONER ANGUS: Who would receive them in that case?

MR. LEWIS: Steam boat companies.

THE CHAIRMAN: Who?

MR. LEWIS: Steamship companies operating down the river and to Anticosti and Prince Edward Island and these other places.

To illustrate but two of the hopeless inadequacies of the present subvention in relation to the carriage and delivery of mail, attention is drawn to page 31 of the Provincial Brief wherein reference is made to the delivery of mails by the coastal steamers in ports without wharves or docking facilities. In such ports, the ships are required to deliver the mail to the Post Offices to await its preparation there, and to re-deliver it to the ship. This involves the use of the ship's boat with three men, which in turn results in serious delay, a factor of great consequence, when it is considered that the daily cost of operation of a coastal boat is anywhere from \$700 to \$1,000. The second illustration has reference to the movement of mails across the Gulf of St. Lawrence, that is, via North Sydney - Port aux Basques. That is the route by which all mail is transported both into and out of Newfoundland to the mainland, excepting of course, air services. It will be found that since the inauguration of Confederation the mail service across the Gulf of St. Lawrence has grown tremendously, and it is an open secret that large selling agencies on the mainland who do a mail-order business in Newfoundland, use the mail and its system as a means of transportation and distribution. Everything from a hand-saw to a water bucket and a baby carriage is transported today by means of a mail-bag, and for this service of moving the tremendous volume of mail across the Gulf of

St. Lawrence, the S.S. "Cabot Strait" and/or her relieving ship, receives \$45 -- the distance from Sydney to Port aux Basques being ninety steaming miles.

The prevailing cubic rate for cargo is 60¢ per cubic foot, and if only half of this amount were allowed, the aggregate earnings on the basis of 1947-48 liftings would be \$350,000 -- an amount sufficient to eliminate the coastal deficit.

It is accordingly suggested that the payment of subventions to the coastal system adequate to the service performed, be a subject of recommendation by this Commission.

Harbour Improvements

It has been recommended in the Brief that an investigation be instituted with a view to the improvement of harbour facilities at St. John's, Corner Brook and Port aux Basques. The Province endorses this recommendation and commends it to the attention of the Commission with a view to obtaining a recommendation thereon. What has been said previously regarding the increase in the volume of traffic from mainland ports to Newfoundland, applies to this recommendation, since the greater the volume of traffic prevailing through Sydney, the more traffic will have to be handled at Port aux Basques and at the moment facilities at that port are taxed to the limit.

It is doubtful in the light of prevailing and prospective conditions if Port aux Basques could ever be improved to the extent where it could adequately handle the volume of traffic that will offer. Already harbour facilities at that port are being taxed to capacity, particularly during the winter months with newsprint shipments from Corner Brook, when there is a serious congestion. This is due to the limited area of the harbour and the fact that the yardage facilities are

greatly circumscribed because of physical conditions. It is quite evident that any substantial increase in traffic across the Gulf of St. Lawrence will make it imperative that alternative inlets will have to be provided to take care of this increased traffic.

In this connection it is suggested that a recommendation be made to the effect that the entire harbour facilities, including railway terminal facilities at Port aux Basques, be made the subject matter of an immediate and exhaustive investigation, to the end that adequate facilities may be provided, either there or elsewhere, for the smooth handling of traffic, both passengers and freight coming into the Province via the North Sydney gateway.

With reference to Corner Brook, it is reasonable to think that as time goes on, Corner Brook will become a port of very substantial importance, particularly in relation to shipping moving from lake and river ports to Newfoundland. A direct water route from Montreal, Toronto and lake ports is available to Corner Brook from May to December in each year. With the increased volume of purchasing to be developed in Canadian markets, it is quite apparent that a large proportion of this traffic will move direct by water from Upper Canadian ports to Corner Brook. This centre in turn will become the distributing point for the west coast area. The constitution of such a point of delivery would of course have the advantage of relieving the pressure on Port aux Basques during the summer months. Difficulty, however, arises in relation to Corner Brook in that all harbour facilities at that port are presently owned and controlled by two private concerns. This is a situation that requires to be dealt with and any investigation that may be made or

ordered in relation to Port aux Basques should embrace within its scope of activity the port of Corner Brook with a view to the expansion of harbour facilities and/or the establishment of public wharves and warehouses at that port.

With reference to St. John's: its future outlook has been dealt with in extenso on pages 41 and 42 of the Provincial Brief. (Vol. 32 pp. 6242-46). If it is to be maintained as a port of importance to the Island, the suggestions contained therein, or recommendations similar thereto, will have to be adopted without delay.

NATIONAL HARBOURS

The establishment of one or more national harbours in Newfoundland was the subject matter of discussion between the delegates from Newfoundland and the representatives of the Canadian Government who negotiated the Terms of Union at Ottawa. The creation of one or more such harbours within the Island could be a matter of far-reaching importance to the future economy of Newfoundland. Because of the Island's geographic position on the one hand, her economic position on the other, and the fact that she has harbours suitable to development as a national harbour, makes it imperative that the matter discussed by the negotiators, be implemented.

Privy Council Order No. 6033 constituting this Royal Commission empowers the Commission *inter alia*, to:

"(a) Review and report upon the effect, if any, of economic, geographic or other disadvantages under which certain sections of Canada find themselves in relation to the various transportation services therein, and recommend what measures should be initiated in order that the national transportation

policy may best serve the general economic well-being of all Canada."

It is clearly within the scope of the terms of reference of this Commission to consider the effect upon the economy of Newfoundland, and possibly of Canada as a whole, of the establishment of a National Harbour within the Island. In this connection, the fact should be kept in mind that such a utility would and could be an important link in the development of international trade. In other words, in addition to its being a gateway for the importation and export of goods to and from Newfoundland, it could also be made a free port for the distribution of goods over the main trade routes of the world. This idea of a national harbour in Newfoundland, with free appropriate port facilities, has exercised the minds of men interested in transportation for many years. It has received the approbation and support of trade organizations, shipping interests, the press and Governments, in the past.

Mortier Bay on the west side of Placentia Bay, was the point to which this thought was directed in the past. Much money, time and effort were expended towards the development of this idea, but the advent of two World Wars caused the project to be abandoned temporarily.

Newfoundland is rich in natural harbours. Her coastline is deeply indented. Bays of large proportions exist all around the coast, and it is quite conceivable that more than one such location might be found suitable for such a purpose. Attention is particularly directed towards the southern portion of the Island, where harbours exist that are ice-free all the year 'round, and which offer ample space for the concentration of shipping such as would be incidental to a project of this kind.

To justify the establishment of such a utility, the site selected should, apart from its natural harbour facilities, offer a prospect of local development contiguous to the port, which would constitute a source of trade for the harbour itself. Again, its availability to trans-Atlantic shipping for trans-shipment purposes, without necessitating serious deviation from the ordinary route, must be considered. To this end, it is submitted that a survey should be directed towards the southern portion of the island, with a view to selecting the most suitable site for such a development; a site which would provide local natural resources for development, as well as contiguity to the trade routes from the Great Lakes and the St. Lawrence River, and from the American seaboard, and vice versa.

Already in this submission, it has been suggested that a line of communication be established from Gander Airport to some suitable point of the southern coastline, whereby means of access to the Airport could be provided. Such a scheme could very well be allied with a national harbour development since in such a harbour it would be possible to concentrate sources of supply of stores necessary for the feeding of the Airport. The piers and jetties incidental to such a harbour would in turn be available for use to the military authorities, should the exigencies of the times require. A road or railway from Gander to a national harbour on the southwest coast would provide a feeding line to the harbour from the industrial centres of the Island, and thus a local source of revenue would be available to the facility. Again, such a channel could be used for transportation of imports to the central section of the Island, and a two-way traffic would be made available through the feeder line. It would provide the shortest means of communication to the

interior of the Island, as well as to Gander and it would have the effect of opening up, for development, such latent natural resources as may exist in that particular area.

At the present time, two great industrial centres exist in the heart of Newfoundland: one at Grand Falls - a pulp and paper development, and the other at Buchans - a rich mining development. Since the main Brief was prepared, substantial ore bodies have been discovered at Buchans, and it is natural to assume that in time this expansion will continue. Both Grand Falls and Buchans are without shipping facilities during the winter months. The Buchans Mining Company is obliged to stock-pile its ores during the winter season, while the Grand Falls Company has to ship through St. John's, a distance of over 200 miles. It is reasonable to think that the opening up of an artery of communication to the southern coastline, which at its nearest point is not further than 80 miles from Grand Falls, would provide a utility that both companies would quickly avail themselves of as a means of exporting their products and importing their requirements.

In the vicinity of Bay d'Espoir there is a stand of commercial timber, approximately 1,000,000,000 cords; and there is on Labrador an area of timber proven to contain 65,000,000 cords. There is on file a letter from the manager of Bowater's Mills at Corner Brook to the effect that a mill on the southwest coast, fed by the resources of Bay d'Espoir and of Labrador would be a feasible proposition. Further, the tract of land between the railway line which touches the northern and eastern bays and the southwest coast, is entirely without means of communication. Presently, a trans-insular road is contemplated, but this in turn will parallel the railway and will leave untapped the vast tract between the

railway and the southern coastline. There is no bisecting artery of communication running north and south; a factor not without significance, when one considers the lack of development in the interior of the Island.

It may be said that this is a matter for the Provincial Government to undertake, but if the connecting of Gander with the coastline commends itself, then the road and/or railway would not be a matter of provincial responsibility -- seeing that its primary justification would be the safe-guarding from a military standpoint of the North American Continent. It follows nevertheless, that given a road and/or other means of communication, benefits would accrue to the Province of Newfoundland of far-reaching economic importance. At the same time, the primary object of the project, namely the provision of an international safeguard against attack, would be met.

There is a third feature pertaining to this idea which would also be of tremendous importance to Canada as a whole. Until such time as the St. Lawrence Waterways are an accomplished fact, it will be necessary to trans-ship cargoes at Montreal, and/or to use shallow-draft ships to transport the wheat, grain products and other exports from the head of the Great Lakes. By establishing a trans-shipping port on the southern coast of Newfoundland, these inland carriers could continue their voyages, and the trans-shipment point could be moved hundreds of miles further eastward than it is today.

Ocean-going carriers could discharge and load at this intermediate port, with consequent saving of time in ocean transit. Heavier cargo-carrying units with consequent reduction in transportation costs could and would be utilized. Again, such a port would provide facilities for the concentration of winter shipments; thus

making it possible to move commodities all the year 'round and eliminating long and costly rail hauls from Montreal and other shipping centres, to the Atlantic seaboard. This idea may seem visionary, but it is submitted that it offers sufficient attraction to at least warrant a thorough investigation of the feasibility or otherwise of the scheme. This brief does not attempt to pin-point the adoption of this idea to one particular place or territory; it is merely an attempt to show in broad outline some of the advantages that would necessarily follow from the establishment of a National Harbour. These advantages would appear to benefit not only the local economy of the Province, but also to offer to Canada at large a means whereby her transportation system oceanwise could be modernized, made more efficient, and certainly, more economical.

It is submitted, that a thorough investigation of the project is well justified. If such investigation disclosed that the idea was not feasible, no great harm would be done. If, on the other hand, it were found to be practicable, far-reaching results would follow to the general economic benefit of Canada and the provinces particularly.

Newfoundland's position vis-a-vis Canada as a whole, is somewhat anomalous. She is isolated physically by virtue of the fact that she is an island. Unless there is a great change in trading practices she can never hope to obtain a market for her products on the mainland. Her trade has always, and must continue to be, with European countries generally, and because of this fact, her basic economy is naturally affected by the vicissitudes of international exchange. The Canadian railway system can never be to Newfoundland what it has been to the rest of Canada. There it was the bond that bound all parts of the Dominion together, and there it provided the trade channel through

which and over which the volume of trade ebbed and flowed from one section of Canada to another. Because of it, Canada has been cemented into a great nation and has developed almost beyond expectation. But such can never be the position in relation to Newfoundland; our trade can never flow West, and our goods must be transported by water. Whatever the rates may be and no matter what the concessions that the Province may be able to gain by way of rate reduction, the fundamental factor will still exist: that Newfoundland must trade with the world, or starve.

It therefore follows that her economy must be strengthened by development within herself of the natural resources with which she may be blessed. This development can only come after adequate Island-wise transportation is made available to her, and the only way that this can be done is as a component part of the policy of development of Canada as a whole, whether from the standpoint of the strengthening of military defences or the more efficient development of transportation directed towards the industrial expansion of Canadian economy. That is why the idea of a National harbour is stressed.

Canada has welcomed Newfoundland into Confederation, and having once absorbed her, she cannot ignore her. The impact federation upon her economy has been severe. It is true that very material social benefits have resulted from the alliance, but it is also true that Canada cannot offer to Newfoundland a market for her natural products. Unless Newfoundland can sell in the world markets the products of her fisheries, her forests and her mines, then she must languish and decay, and become an atrophied part of the Canadian body. This cannot be allowed to happen since she offers to Canada, by her geographic position, advantages and facilities, which if developed, must of necessity result in her waxing strong enough to becoming

a worthy partner to the Canadian Federation, a credit to those who conceived the idea of federation and a justification, not only to local advocates, but to those Canadians who were responsible for negotiating the terms of union.

History will tell the tale and will record whether or not the absorption of Newfoundland was justified or otherwise. That history is now in the making, and it is within the power of those charged with the initiation of policy to say whether or not Newfoundland is to be a worthy partner, prosperous and strong, a self-respecting unit in the Canadian federation, or if she is to retrogress to the point where her people must abandon her, where her economy must be destroyed and where she will be a mark of reprobation to Canadian statesmen and Canadian statecraft.

This Commission has been good enough to visit our Island and to listen to our pleas. We have endeavoured to put before you certain things which we think should be done in the interest of both parties to this deal. A recommendation from this body must of necessity carry great weights. It is the first official body that has visited our shores since the advent of Confederation, and we feel that you have looked upon us and upon our cause with sympathy. We are satisfied that you will, when the time comes to formulate a report, endeavour to see Newfoundland's point of view, and to this end recommend that steps be taken to help her along the road. The government of Canada, whose child you are, cannot turn a deaf ear to such recommendations as you may make. If it does, then it will have shown in advance, a lack of sympathy with Newfoundland's position, and a want of desire to help her to make the grade. We feel confident that this Board will insofar as it can, within the terms of reference, meet our requests and see the justification of our cause. We have every confidence therefore, that Newfoundland's case is in good hands.

The Commission

adjourned at 4.10 p.m. to meet on Thursday, May 11th, 1950
at 10.30 a.m.)

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